

# DIGEST OF CASES REPORTED IN THE SOLICITORS' JOURNAL & WEEKLY REPORTER VOLUME 60.

## ADMINISTRATION:—

1. *Creditor's action—Order for administration—Cost not mentioned—Accounts—Further consideration—Plaintiff's right to have his costs—Practice—R.S.C., ord. 55, r. 10.*—Where a plaintiff obtains judgment in an action for administration and nothing is said about costs, he is entitled to his costs down to judgment, and he is also entitled to the costs of taking accounts after the judgment, because they are part and parcel of the machinery of carrying out the judgment in respect of which he has already been allowed his costs. Protection is afforded to the estate against unnecessary or improper administration proceedings by R.S.C., ord. 55, r. 10.

The principle sought to be deduced from *Croggan v Allen* (1882, 22 Ch. D. 101) is not applicable to such a case as this.—*RE ROBY, Peterson, J.*, 291.

2. *Income overpaid—Trustee a party to the overpayment—Applying for adjustment—Not debarred.*—Where the executrix of the last surviving executor of a deceased testator had purported to appoint herself and others trustees of his will, which appointment was bad as to herself, but she had nevertheless acted as trustee and stipulated that she should have the sole control of the income, and in effect her hand made the improper distribution whereby she benefited.

Held, that one of the other trustees so appointed was not debarred, merely by being a party to the overpayment of the income which had constituted the improper distribution, from having a proper adjustment made in respect of such overpayment.

*Re Horne, Wilson v. Cox-Sinclair* (1905, 1 Ch. 76), not of general application.

*Re Ainsworth, Finch v. Smith* (1915, 2 Ch. 96), applied.—*RE READING, Sargant, J.*, 655.

3. *Real estate descending—Separate charges on separate portions of real estate—Aggregation—Deficiency of value of security—Locke King's Acts (Real Estate Charges Acts), 1854, 1867, 1877 (17 & 18 Vict. c. 113; 30 & 31 Vict. c. 69; 40 & 41 Vict. c. 34).*—Where five separate portions of real estate of an intestate descended to her co-heiress at law each charged with a separate mortgage, one of which mortgages was for a sum in excess of the value of the security,

Held, that the personal estate of the deceased, and not the rest of the descended real estate, was liable to make good the deficiency of the overcharged portion of real estate.—*RE HOLT, Sargant, J.*, 640.

## ADULTERATION:—

*Milk—Deficiency in milk fat—Milk not tampered with—Mode of feeding cows—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.*—A farmer sold milk which, though in no way adulterated, was, in fact, deficient in milk fat owing to the mode of feeding the cows.

Held, by the Divisional Court (Darling, Lawrence and Avory, JJ., Bray and Scrutton, JJ., dissenting) that this did not justify a conviction under section 6 of the Sale of Food and Drugs Act, 1875.—*HUNT v. RICHARDSON, K.B.D.*, 588.

## ALIEN ENEMY:—

1. *Contract of tenancy—Premises within prohibited area—Liability of tenant for rent—Foundation of contract—Aliens Restriction Act, 1914 (4 & 5 Geo. 5, c. 12)—Aliens Restriction (Consolidation) Order, 1914, s. 18 (1).*—The plaintiffs let to the defendant a residential flat at W. for a term of three years from 25th March, 1914. The agreement contained a covenant that the defendant would not assign or sublet without the lessors' consent, which consent was not to be unreasonably withheld. By the Aliens Restriction Order it was provided that alien enemies should not reside within certain prohibited areas, of which W. was one. The defendant was a Hungarian, and consequently, on the outbreak

of war, became an alien enemy, and he contended that the Order had rendered the agreement void. In an action to recover the rent, which had become due since the Order,

Held, that the personal occupation of the premises was not the foundation of the contract, and that the Order had not extinguished the tenancy. The defendant was therefore liable for the rent.—*LONDON AND NORTHERN ESTATES (LIMITED) v. SCHLESINGER, K.B.D.*, 223; 1916, 1 K. B. 20.

2. *German resident registered in England—Licence to remain—Subsequent internment—Right to sue on contract entered into before internment.*—The internment as a prisoner of war of a resident alien enemy who has been previously registered in this country under the Aliens Restriction Order, and thereby impliedly licenced to remain here under protection, does not deprive him of his ordinary civil rights, including the right to maintain an action, acquired before the internment.

*Sparrenburgh v. Bannatyne* (3 Bos. & P. 163) applied.

Decision of Younger, J., affirmed.—*SCHAFFENIUS v. GOLDBERG, C.A.*, 105; 1916, 1 K. B. 284.

3. *Internment of alleged alien enemy—Alleged loss of nationality under German statutes by residence abroad—Habeas corpus.*—The applicant for a writ of habeas corpus had been interned as an alleged alien enemy. He was born in 1883 of German parents in Germany. When about fifteen years of age he went to South America, and after living there two or three years came to England, where he had since continuously resided with his wife, who was a Dutch lady. He alleged that he had ceased to be a German citizen, and not having acquired an English nationality, was a person of no nationality at all. In these circumstances he applied for a writ of habeas corpus calling upon the governor of the camp in which he was interned to shew cause why he should not be released. Both the Divisional Court and the Court of Appeal refused to make the rule absolute.

Held, that the appellant had failed to prove that for all purposes he had lost his rights as a German citizen, and, therefore, the rule had rightly been discharged.—*EX PARTE WEBER, H.L.*, 306; 1916, 1 A. C. 421.

See also *Company*.

## APPEAL:—

*Appeal from order of judge at chambers—Dispute as to submission to arbitration—Arbitrator appointed by district registrar—Matter of "practice and procedure"—Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1 (4)—R.S.C., 1883, ord. 54, r. 23.*—A contract for the sale of timber provided that all disputes between the parties were to be referred to arbitration. The contract was signed by the plaintiffs, the purchasers, and by the defendants, the vendors' brokers, "by the authority of our principals as agents." Disputes having arisen, the plaintiffs applied to the defendants to appoint an arbitrator. The defendants refused, contending that they were only agents, and were not parties to the contract. The plaintiffs applied to the district registrar, who made an order for the appointment of an arbitrator. The judge at chambers discharged this order, and the plaintiffs appealed to the Divisional Court. The defendants took the preliminary objection that the appeal lay to the Court of Appeal.

Held, that as the matter in dispute was whether the defendants were parties to the submission to arbitration, there was no cause or matter pending in the High Court, and the appeal was not in a matter of practice and procedure within the meaning of ord. 54, r. 23; it was therefore rightly brought to the Divisional Court.—*MILLER, GIBB & CO. v. SMITH & TYLER, K.B.D.*, 514; 1916, 1 K. B. 419.

## ARBITRATION:—

1. *Agricultural tenancy—Costs—Discretion of Arbitrator—Agricultural Holdings Act, 1908 (8 Ed. 7, c. 28), s. 13, Schedule II., rr.*

14, 15.—The plaintiff was the owner, and the defendant the tenant, of a farm under a lease which terminated in 1913. On its determination the plaintiff claimed the sum of £744 from the defendant in respect of dilapidations. The matter went to arbitration, with the result that the arbitrator awarded the plaintiff £71, and directed that the costs of the arbitration should be borne by the plaintiff. The county court judge refused to set aside the award, and a Divisional Court held that the discretion of a sole arbitrator under the Agricultural Holdings Act, 1908, was by rule 15 made unfettered even by the rules which limit the power of a judge of the High Court as to costs, and dismissed the appeal. The plaintiff again appealed.

Held, that the powers conferred by the Act of 1908 as to costs on an arbitrator were no higher than those as to costs of a judge of the High Court. There was here no material on which the arbitrator could properly exercise his discretion and deprive the successful party of his costs, and the award was one, therefore, which he had no competency to make, and was therefore bad.

Decision of the Divisional Court (reported 60 SOLICITORS' JOURNAL, 255) reversed.—*RE ASHEURTON AND GRAY, C.A.*, 511; 1916, 2 K. B. 353.

2. *Application to set aside award—Validity of rule making arbitrator a party—Jurisdiction of county court judge to order arbitrator to pay costs—Agricultural Holdings Act, 1908 (8 Ed. 7, c. 28), s. 4, Schedule II., rr. 10, 13—County Court (Agricultural Holdings) Rules, 1909, ord. 40, r. 4 (1) (14).*—Rule 4 (1) of order 40 of the County Court (Agricultural Holdings) Rules, 1909, which provides that the arbitrator shall be made a party to an application to set aside an award, being a rule of practice and procedure only, is not *ultra vires*. A county court judge, however, has no jurisdiction to order the arbitrator to pay the costs, where the arbitrator has not taken an active part in the proceedings, and where there is no question of his having been guilty of collusion or dishonesty.—*LONDON v. KEEN, K.B.D.*, 619; 1916, 1 K. B. 994.

3. *Award condition precedent to action—Stay of action—Discretion of judge—Questions of law—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*—Where one of the conditions incorporated in a live stock policy of insurance made a reference of all disputes to arbitration binding on the parties, and declared it to be an essential part of the contract that until an award was made no action should be brought thereon.

Held, that a county court judge in the exercise of the discretion given by the Arbitration Act, 1889, s. 4, might refuse to stay an action on the ground that difficult questions of law would probably have to be tried.—*CLOUGH v. COUNTY LIVE STOCK INSURANCE ASSOCIATION, K.B.D.*, 642.

See also Appeal; Sale of Goods.

#### BANKRUPTCY:—

1. *English and Irish statutes—Yearly income or salary voted to M.P. out of the public funds—Irish member a bankrupt when elected—Order obtained by official assignee directing that part of this income be paid him for benefit of creditors—Bankruptcy (Ireland) Amendment Act, 1872 (35 & 36 Vict. c. 58), s. 51—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 51 (2).*—The respondent, a bankrupt on his own petition, was elected M.P. for an Irish constituency, and received the £400 a year voted to be paid to Members of Parliament by resolution of the House of Commons. The appellant, as the official assignee in his bankruptcy, obtained an order in the King's Bench (Bankruptcy), Ireland, that the respondent should, out of his Parliamentary salary, pay £200 a year to the appellant for the benefit of his creditors.

Held, that the payment to members was not in the nature of a dole, and was attachable for the benefit of creditors.

Difference between Irish and English bankruptcy law on this point considered and explained.—*HOLLINSHEAD v. HAZLETON, H.L.*, 139; 1916, 1 A. C. 428.

2. *Marriage settlement—Protected life interest—Determination on bankruptcy or other events—Settlor adjudicated bankrupt—Forfeiture as between person with protected life interest and persons in remainder.*—Where a future husband settled property by ante-nuptial settlement giving himself a protected life interest until bankruptcy and other events after the happening of any one of which events there was a gift over to his wife, and after marriage became bankrupt,

Held, that although the limitation until the settlor was declared bankrupt was void as against the trustee in bankruptcy, it was effective for the purpose of producing a forfeiture as between the person who had the protected life interest and the person settled in remainder.

*Re Johnson Johnson* (1904, 1 K. B. 134) applied.

Held accordingly, that the trustee in bankruptcy was in

possession of the bankrupt's life interest, which was no longer capable of being affected by any subsequent forfeiture.—*RE BURROUGHS-FOWLER, Peterson, J.*, 538; 1916, 2 Ch. 251.

#### BILL OF SALE:—

*Validity—Statement of consideration—"£450 now paid to grantor"—Retention of part of money by holder to satisfy liability on previous bill—Liability not matured—Dominion and control over money paid—Bills of Sale Act, 1892 (45 & 46 Vict. c. 43), s. 8.*—A bill of sale was expressed to be granted in consideration of £450 paid to the grantor. The holder in fact agreed to advance £25 to the grantor on condition that she executed a bill for £450, of which £325 was to be applied in satisfaction of moneys due under a previous bill payable by instalments on which only one instalment was then due, and £100 was to be paid to another creditor, the borrower retaining the balance. The borrower, accompanied by a clerk from the lender's office, cashed a cheque for £450, returned to the office, and paid over all but the £25.

Held, that the consideration was not truly stated, and that the bill of sale was void.

*Ex parte National Mercantile Bank, Re Haynes* (15 Ch. D. 42), overruled.—*PARSONS v. EQUITABLE INVESTMENT CO., C.A.*, 639.

#### BREACH OF PROMISE:—

*Action against executor of promisor—Special damage—Business given up—Absence of evidence corroborating promise.*—The plaintiff brought an action to recover damages for breach of promise of marriage and the defendant died before the statement of claim was delivered. The plaintiff obtained leave to continue her action against the executor, alleging that she had suffered special damage, having given up a lucrative business in consideration of a promise to maintain her till marriage and to marry her. Lush, J., gave judgment for the defendant on the ground that the action did not survive as against the executor.

Held, that, whether or not on proof of special damage the plaintiff could have succeeded, the judgment entered for the defendant in this case must stand, as the plaintiff had here failed to give any corroborative evidence to support her case that the deceased man had promised to marry her. Therefore, any claim for special damage, which only could succeed if it was established to be due to the breach, must necessarily fail.

Decision of Lush, J. (reported 59 SOLICITORS' JOURNAL, 350; 1915, 1 K. B. 798), affirmed.—*QUIRK v. THOMAS, C.A.*, 174; 1916, 1 K. B. 516.

#### CARRIER:—

*Carriage of goods—Furniture remover—Damage by accidental fire—No implied liability as a common carrier.*—The defendant, a furniture remover, undertook the removal of the plaintiff's furniture from B. to M. Before agreeing to remove the goods the defendant inspected them and then submitted an estimate. Apart from the agreement as to the price, no other terms were mentioned. On the journey a fire broke out through no fault of the defendant's, and the goods were damaged. The plaintiff sued the defendant for the loss sustained. It was admitted that the defendant was not a common carrier, but the plaintiff contended that, as he was exercising the public employment of a carrier, he was under the same liability as a common carrier.

Held, that there was no evidence that the defendant undertook the liability of a common carrier.—*WATKINS v. COTTELL, K.B.D.*, 404; 1916, 1 K. B. 10.

#### CERTIORARI:—

*Kinematograph licence—Conditions of licence—Notice prohibiting exhibition of film—Objection to conditions by owner of firm—Person interested.*—The applicants, who were the owners of the producing rights in a certain film, had entered into a contract with the proprietor of a certain theatre for the exhibition of the film at his theatre. The licence of the theatre contained a condition that no film was to be exhibited if notice that the justices objected to it had been given to the licensee. In pursuance of this condition the justices gave notice that they objected to this film. The applicants thereupon applied, as persons aggrieved, for a writ of certiorari to quash the notice, on the ground that the justices had no jurisdiction to issue the notice, the condition on which it was based being too vague, and consequently *ultra vires*.

Held, that the applicants were not entitled to apply for a certiorari, as they had no such interest in the licence as would constitute them persons aggrieved.—*EX PARTE STOTT, K.B.D.*, 418; 1916, 1 K. B. 7.

See also Prohibition.

#### CHARITY:—

*Mortmain—Private Act—Statutory trust—Mortmain and Charitable Uses Acts, 1888 and 1891 (51 & 52 Vict. c. 42; 54 & 55*



*Vict. c. 73*).—A private Act will not set aside the provisions of the Mortmain and Charitable Uses Acts, 1888 and 1891, unless language is used in the private Act which makes the application of those Acts impossible.

*Webster v. Southey* (37 Ch. D. 22) followed.

The National Trust Act, 1907, s. 21, sub-section 2, was inconsistent with and overrode the provisions of the Mortmain and Charitable Uses Act, 1891, by which land acquired by will by a charity must be sold in twelve months, but that did not exonerate the trustees from complying with the terms of the Mortmain and Charitable Uses Act, 1888, relating to conveyances *inter vivos*.

*Robinson v. The London Hospital* (1852, 10 Hare, 19) applied.

The National Trust for Places of Historic Interest or Natural Beauty is a charity.

Tests in *Income Tax Commissioners v. Pemsel* (1891, A. C. 531 and 583) and *Re Foveaux, Cross v. London Anti-Vivisection Society* (1895, 2 Ch., p. 506) satisfied.—*RE VERRALL, Astbury, J.*, 141; 1916, 1 Ch. 100.

#### COMPANY:—

1. *Admissibility of parol evidence, to supplement minutes—Charge not under seal—Evidence of agreement to issue valid debenture—Particulars delivered under Companies (Consolidation) Act, 1908, s. 93, sub-section 3.*—Parol evidence is admissible in certain cases of a resolution of the directors of a company which does not appear upon the minutes. The minute book is not absolutely conclusive.

*Knight's case* (1867, L. R. 2 Ch. 321) applied.

The employment by the plaintiff of her husband to apply and pay for debentures for her does not affect her with notice of all he knew as director, and the question whether one director could form a quorum of a board of two is a matter of internal management of the company, and does not affect a debenture-holder seeking to enforce her security.

*County of Gloucester Bank v. Rudry Colliery* (1895, 1 Ch. 629) applied.

A company can create a charge not under seal; where the seal has been improperly affixed it can be disregarded.

*Biggerstaff v. Rowatt's Wharf (Limited)* (1896, 2 Ch. 93) applied.

A resolution which was ineffectual to ratify an invalid and unnecessary sealing ratified the validity of the debentures as equitable charges, and they were held to be sufficient evidence of an agreement by the company to give valid debentures.

*Ross v. Army and Navy Hotel Co.* (1886, 34 Ch. D. 43) applied.—*RE FIREPROOF DOORS (LIMITED), Astbury, J.*, 513.

2. *Agreement by company to employ managing director for definite term—Payment by salary and commission on sales—Winding-up—Breach of contract—Damages—Loss of prospective commission.*—A company and its directors entered into a contract to employ a person as its managing director for one year certain, at a weekly salary, plus commission at the rate of 5 per cent. on all sales effected of the company's goods. Four and a half months later a compulsory order was made for the winding-up of the company on the petition of two directors. The late managing director claimed to prove in the winding-up for damages for loss of salary and commission.

Held (affirming *Astbury, J.*), that as the business of the company had entirely come to an end through no act or default of its own, the applicant was not entitled to prove for any loss of prospective commission.

*Ex parte Madure* (L. R. 5 Ch. App. 737) followed.—*RE R. S. NEWMAN (LIMITED), C.A.*, 585.

3. *Capital or income—Investment of surplus profits in shares of another company—Amalgamation—Distribution of assets representing reserve fund as dividend—Intention of company—Rights of beneficiaries.*—Where a company makes a distribution of part of its assets among its shareholders, the question whether the shares or moneys allotted ought to be treated as capital or income is one which depends on the intention of the company.

The A company invested accumulated surplus profits in shares of a trust company which held shares in companies B, C and D. On an amalgamation of companies A, B, C and D the scheme provided that the investments representing the reserve fund should be retained by the A Company for distribution among its shareholders. The trust company then went into liquidation, and its assets, consisting of shares in the combine and cash, were distributed as a dividend among the shareholders of company A.

Held, there had been no capitalization of this reserve fund, and that as between tenant for life and remaindermen of settled shares the funds distributed must be treated as income and not as capital.

*Bouch v. Sproule* (12 A. C. 397) applied.—*RE THOMAS, ANDREW, v. THOMAS, C.A.*, 537.

4. *Debenture—Floating charge—Registered agreement—Debenture carrying out agreement within three months of winding-up—Companies (Consolidation) Act, 1908 (8 Ed. 7, c. 69), ss. 93 and 212—R.S.C., ord. 65, r. 71.*—X gave security for the overdraft of a company at its bankers, and an agreement was entered into with X by the company that in certain events the company would give X a debenture. The events happened eight months later, and the company gave X the debenture. Within three months from the date of the giving of the debenture the company went into voluntary liquidation.

Held, that, having regard to section 212 of the Companies (Consolidation) Act, 1908, the debenture did not give an effective charge, and the executory agreement did not save the plaintiff's position, because the debenture was precisely such a document as was contemplated by the agreement, and accordingly there was so complete a performance of the executory agreement as to leave no obligation or right still subsisting under it.

Held, also, that in any event the plaintiff would have been no better off under the agreement, because it gave no first charge, but merely the right to have a floating charge in certain events, according to the express contract of X.

On taking accounts and making inquiries under the usual judgment in a debenture-holder's action taken by consent on motion, but without the Court declaring a charge, the master found that the money due under this debenture was charged, and his certificate was sent back to him to be varied.

Held, further, that the above constituted special circumstances entitling the liquidator to have his summons heard within ord. 65 r. 71.

Held, further, that the form of the judgment on motion by consent, which omitted a declaration of charge, did not preclude the Court from considering whether the said debenture gave an effective charge, having regard to section 212 of the Companies (Consolidation) Act, 1908.

In general, on judgment being taken by consent, in a debenture-holder's action of this kind, a charge should not be declared, and the liquidator should not consent to the declaration of a charge.—*RE GREGORY LOVE & Co., Sargant, J.*, 221; 1916, 1 Ch. 203.

5. *Defunct—Removal from the register—Petition to restore—Assent of registrar—Opposition by party to an action against the company—No locus standi—Practices—Companies (Consolidation) Act, 1908 (8 Ed. 7, c. 69), s. 242, sub-sections 5 and 6.*—It is not necessary for a dissolved company, when presenting a petition under section 242, sub-section 6, of the Companies (Consolidation) Act, 1908, to have its name restored to the register, to present such petition during the period between the striking off and the dissolution.

The practice in the past has been for the publication of dissolution of the company in the *Gazette* to follow almost immediately on the striking off of the company's name by the registrar, and it has been a common and usual practice to make orders for restoration after the date of dissolution under sub-section 5, of section 242, and this practice ought not to be disturbed.

*Re Outlay Assurance Society* (1887, 34 Ch. D. 479) followed.

A person suing the company for rescission of contracts has no *locus standi* to be heard in opposition to such a petition.—*RE CONRAD HALL & Co., Astbury, J.*, 666.

6. *Increase of capital—Extraordinary resolution—Notice of—Sufficiency of notice—Companies (Consolidation) Act, 1908 (8 Ed. 7, c. 69), s. 69.*—Specific notice should be given to shareholders of what is intended to be done where it is desired to pass a resolution to increase the capital of the company, and not a general notice stating the agenda of the meeting to be "to pass resolution to increase the capital of the company."

The language of section 69 of the Companies (Consolidation) Act, 1908, is clear and definite, and the cases decided under section 129 (3) of the Companies Act, 1862, do not affect the necessity for inserting in the notice, in the case of an extraordinary resolution, the intention to propose the resolution as an extraordinary resolution.

The presumption that a Consolidation Act is only intended to reproduce the existing position is merely a *prima facie* presumption, and can be rebutted by the internal evidence of the Act itself.

The law as to extraordinary resolutions in the Companies (Consolidation) Act, 1908, differs materially from that in the Companies Act, 1862.—*MACCONNELL v. PRILL & Co., Sargant, J.*, 556.

7. *Rectification of register—Issue of shares at a discount—Common mistake—Assent by conduct—Ultra vires—Companies Consolidation Act, 1908 (8 Ed. 7, c. 69), s. 32.*—A director lent £100 to his company, in consideration of his being allowed to take up two hundred £1 shares of the company at 10s. each. The director believed that the transaction was in order, and authorized

the company to enter his name on the register in respect of the shares.

Held, that the transaction was a contract to issue shares at a discount and was therefore illegal, and that the director, having assented to the allotment, was liable to pay the full nominal amount of the shares in cash.—*RE JAMES PILKIN & Co., Eve J.*, 369.

8. *Registration in England—Share capital held by alien enemies—Postponement of right to sue for a debt during hostilities.—Disability of alien enemy directors to authorize proceedings—Trading with the Enemy Act, 1914 (4 & 5 Geo. 5, c. 87), s. 2, sub-section (2) (b)—Proclamation relating to Trading with the Enemy, 9th September, 1914, s. 5, sub-section 1.*—A company registered in England under the Companies Act, but the share capital of which was substantially wholly held by alien enemies, and having directors all resident in Germany, sued on certain bills of exchange, dated May and June, 1914. The defendants had accepted the bills before the declaration of war, but the bills had matured after the date when war was declared.

A full Court of Appeal (Buckley, L.J., dissenting) held that the company, being an entity distinct from its shareholders and directors, the payment of the bills was not "trading with the enemy," and that the company was entitled to sue during the continuance of the war.

Decision of the Court of Appeal (59 SOLICITORS' JOURNAL, 232; 1915, 1 K. B. 893) reversed.—*DAIMLER Co. v. CONTINENTAL TYRE AND RUBBER Co., H.L.*, 602; 1916, 2 A. C. 307.

9. *Sale of shares—Resale by seller on failure of purchaser to take up shares—Damages claimed on difference between contract price and market price at date of breach—Subsequent rise in price—True measure of damages.*—By six contracts the plaintiff (the appellant) agreed to sell to the defendants certain shares for delivery at a subsequent date. The contract notes contained a term providing that, in the event of the buyers not making payment on the settlement day, the seller should have the option of reselling the shares by auction and any loss should be recoverable from the buyers. On the settlement day the shares had fallen greatly in value, and on failure to complete, the seller gave notice that he should sell the shares in three days' time. The buyers set up that the seller was indebted to them in another transaction, and they sent cheques for the difference and called for a transfer of the shares. The seller repudiated the claim to a set off, and the cheques were stopped. The seller subsequently sold the shares, which realised higher prices than on settlement day.

In an action by the seller to recover damages,

Held, that the proper measure of damages was the difference between the contract price of the shares and the market price at the date of the breach of the contract.—*JAMAL v. MOOLLA, Dawood & Co., P.C.* 139; 1916, 1 A. C. 175.

10. *Shares—Mortgage—Voting powers still in mortgagor—Mandatory injunction asked against the mortgagor.*—Where a mortgagor of shares wrote a letter to the mortgagor as follows:—"I should have mentioned to you to-day that your voting rights in virtue of the shares held in mortgage by me during the period of the loan will be untouched. Though the shares will be in my name and my voice may give the vote, I shall give no such vote without first consulting you. I shall vote in all cases, when a vote is necessary, in respect of these shares as you wish me to do. This proviso will not be mentioned in the agreement, but you can preserve this note if you like," and then proceeded to vote contrary to the mortgagor's wishes. On a motion for an injunction heard by order forthwith with witnesses,

It was held, (1) that the letter was a collateral agreement, and was for valuable consideration; (2) that a prohibitory injunction must be granted against the defendant to restrain him from voting against the resolution; and that (3) a mandatory injunction must be granted to compel him to vote in accordance with the wishes of the mortgagor.

*Evans v. Wood* (6 Eq. 9) and *Hermann Loog v. Bean* (36 Ch. D. 314) followed and applied.—*PUDDPHATT v. LEIGH, Sargant, J.*, 210; 1916, 1 Ch. 200.

11. *Winding-up—Debt due to company by shareholder—Estate insolvent—Claim by liquidator to set-off—Set-off of dividend on debt against share in surplus assets.*—A shareholder, holding a large block of fully-paid shares in a company, died indebted to the company in a considerable amount. His estate being insolvent, a creditor's administration action was commenced and a decree made. The company at a later date having gone into voluntary liquidation, the liquidator obtained an order in the action striking out his claim as a creditor, and then in the winding-up sought to set-off the whole of the debt against the share of the surplus assets payable to the estate of the shareholder.

Held, following *Cherry v. Boulthée* (4 My. & Cr. 432), that he

was not entitled to retain such share against more than the proper dividend on the debt.—*RE PERUVIAN RAILWAY CONSTRUCTION Co., C.A.*, 25; 1915, 2 Ch. 442.

12. *Winding-up—Private Company—Only two directors—Complete disagreement between them—Deadlock—Application of partnership principles—"Just and equitable"—Companies (Consolidation) Act, 1908 (8 Ed. 7, c. 69), s. 129.*—Where a condition of affairs exists in a private company, as, for instance, a complete deadlock between the directors and sole shareholders, that would justify a dissolution of partnership by order of the Court, if the company were an ordinary partnership, the Court will exercise the discretion conferred upon it by the Companies (Consolidation) Act, 1908, section 129 (vi.), and wind up the company on the ground that it is just and equitable that this should be done.—*RE YENIDJE TOBACCO Co., C.A.*, 707.

13. *Winding-up—Service of petition—Company (Winding-up) Rules, 1909, r. 28.*—It is not sufficient for the affidavit of service of a petition to state that the deponent found the office closed and could not find "any officer or servant" of the company there, but such affidavit must conform strictly with rule 28 of Company (Winding-up) Rules, 1909, and must state that the deponent could not find "any member, officer, or servant" there.—*RE HATCHAM MOTOR GARAGE Co., Neville, J.*, 429.

14. *Winding-up—Surplus assets—Cumulative preference dividends—What arrears payable.*—Arrears of dividends, to which holders of cumulative preference shares are entitled, are not confined to arrears of dividends actually declared.

*Re W. J. Hall & Co.* (1909, 1 Ch. 521) applied.

*Quere*, whether this only applies to the extent of accumulated profits.—*RE NEW CHINESE ANTIMONY Co., Neville, J.*, 513; 1916, 2 Ch. 115.

#### CONFLICT OF LAWS:—

*Equitable charge—Contract to execute a legal mortgage—Land in Dominica—Jurisdiction in personam—Specific performance—Lex situs.*—The testator gave to his two sisters an equitable charge on land in Dominica to secure certain advances made by them to him, and he agreed to execute a legal mortgage. The charge did not legally affect immovables in Dominica. The testator died without having executed a legal mortgage, and the question arose whether the sisters could call upon the legal personal representative of the testator to execute a legal mortgage.

Held, that the Court acting *in personam* must give effect to the equitable right by ordering the execution of a legal mortgage.

*British South Africa Co. v. De Beers Consolidated Mines* (1910, 2 Ch. 502) applied.—*RE SMITH, LAWRENCE v. KITSON, Eve, J.*, 555; 1916, 2 Ch. 206.

#### CONTEMPT OF COURT:—

*Motion to attach—Landlord and tenant—Action for injunction by tenant—Threat by landlord to determine tenancy if proceeded with.*—Where a tenant brings an action against a third party, which may be injurious to the interests of his landlord, the landlord is entitled to assert his legal rights by determining the tenancy. Where the solicitors of the landlord wrote to the tenant to say, in effect, that if he went on with the action his tenancy would have to be terminated, it was held, on a motion to commit the solicitor to prison for contempt of Court in sending letters calculated to prevent the due administration of justice, that such motion must be dismissed, as such conduct was not a contempt of Court at all, but merely a threat to enforce a legal right.

*Ex parte Chetwynd, Re Mulock* (1864, 10 Jur. N. S. 1188) and *Welby v. Still* (1892, 66 L. T. Rep. 523) not applicable.—*WEBSTER v. BAKEWELL RURAL DISTRICT COUNCIL, Neville, J.*, 307; 1916, 1 Ch. 300.

#### CONTRACTS:—

1. *Impossibility of performance—Gas—Gas company—Contract with local authority—Restriction of lighting under Defence of Realm (Consolidation) Regulations—Liability for payments during restriction.*—The plaintiffs, a gas company, contracted with a local authority of a seaside town on the East Coast to provide gas lamps and supply gas within the district of the latter, for five years, under an agreement dated 2nd June, 1911, in consideration of fixed quarterly payments. The plaintiffs did the work and supplied gas until the end of 1914. By an order under the Regulations of the Defence of the Realm Acts, 1914-1915, the lighting of any lamps visible from the sea at all for three quarters of one of these years was prohibited. In an action by the gas company under order 14 to recover £157 15s. 9d. for services rendered to the defendants in pursuance of the agreement of 2nd June, 1911, the defendants pleaded that the performance of the agreement had been rendered



impossible by the order prohibiting street lights, and that they were relieved from their contract during the continuance of that order.

Held, after consideration, that the gas company were entitled to payment for the three quarters in question. The order did not render the lighting unlawful once and for all. Under the contract the supply of gas was not intended to be a condition precedent to the right to recover for the performance of the various services rendered. Those services might have been paid for separately; but the parties had chosen to pay an exclusive sum. Moreover, if the restriction in the present case were relaxed at any time during the term of the contract, and the plaintiffs failed to fulfil their obligations, the defendants would have a good cause of action against them.

Decision of *Low, J.* (reported p. 556, 14 L. G. Rep. 464, 32 T. L. R. 287), affirmed.—*LEISTON GAS CO. v. LEISTON-CUM SIZEWELL DISTRICT COUNCIL, C.A.*, 554; 1916, 1 K. B. 912.

2. *Impossibility of performance—Sale of goods—Declaration of war—Embargo on export—Subsequent removal of embargo.*—A contract for the sale of goods intended for export abroad to a friendly or neutral country is merely suspended in operation for the time being and not annulled by a Proclamation or other act of State made or done on the outbreak of war prohibiting any export of the goods; and if within a reasonable time the embargo is removed, the contract remains binding on the parties and must be performed.—*ANDREW MILLAR & CO. v. TAYLOR & CO., C.A.*, 140; 1916, 1 K. B. 402.

3. *Indemnity—Assignment to principal creditor—Married woman without separate estate—Assignability of contract to indemnify—Extent of indemnifier's liability.*—Under a contract of indemnity the rights of the person indemnified are not merely personal, but are capable of being assigned to the creditor or any other person, and the indemnifier is liable to pay the full amount, although the person indemnified, having no estate, has not suffered any loss in an action at the suit of the principal creditor.

A married woman, holding shares in a company on which there was a heavy liability for unpaid calls, transferred them to an infant, a nominee of the defendant, a director of the company, who indemnified her against her liability. The company recovered judgment in an action against her for unpaid calls, but she had no separate estate. She thereupon assigned her rights under the contract of indemnity to the company, which brought an action against the indemnifier.

Held, that he was liable to the full amount of the judgment.

*Re Perkins* (1898, 2 Ch. 182) followed and applied.—*BRITISH UNION AND NATIONAL INSURANCE CO. v. RAWSON, C.A.*, 679. See also *Alien Enemy*.

#### COPYRIGHT:—

*Novel—Infringement by cinematograph film—Burlesque—Immoral episodes—Assistance of the court—Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), s. 1.*—In considering whether the copyright in a novel has been infringed by a cinematograph film, the true inquiry is whether, keeping in view the idea and general effect created by the perusal of the novel, there is such a degree of similarity as would lead one to say that the film was a reproduction of the novel or of a substantial part of it.

*Semble*, a burlesque is not an infringement of copyright, either (1) on the ground that copyright, like patent-right, is only granted for the purpose of preventing persons from unfairly availing themselves of the works of others; or (2) on the ground that a burlesque is not a colourable imitation; or (3) on the ground that infringement cannot take place where the defendant has bestowed such mental labour on what he has taken, and has subjected it to such a revision and alteration as to produce an original result.

The principles laid down in *Hanfstaengl v. The Empire Palace* (1894, 3 Ch. 109) and *Francis, Day, & Hunter v. Feldman & Co.* (1914, 2 Ch. 728) applied.

On the ground of public policy the Court will not protect a work which it considers to be a work of immoral tendency.—*GLYN v. WESTERN FEATURE FILM CO., Younger, J.*, 293; 1916, 1 Ch. 261.

#### COSTS:—

1. *Claim against two defendants jointly—Alternative claim against each defendant separately—Judgment against both defendants—Appeal by one defendant—Appeal allowed—Co-defendant not served with notice of appeal—Liability of co-defendant for costs.*—The plaintiff sued to recover damages against two defendants jointly and severally. His case was, that a motor van belonging to the second defendant ran into an omnibus belonging to the first defendants, knocking the steering wheel out of the driver's hand, in consequence of which the omnibus damaged his shop window. At the trial the jury found for the plaintiff against both defendants, and judgment was entered accordingly. The first defendants appealed; the

second defendants did not, nor were they made parties to the appeal. The plaintiff, however, gave the second defendants notice that should the appeal be allowed he would apply for an order of indemnity against any costs he should be ordered to pay the first defendants. The appeal was allowed and judgment entered for the appellants, with costs, against the plaintiff in the Court below and of the appeal. In respect of those costs the plaintiff asked for an order against the second defendants.

Held, that as the second defendants, although no parties to the appeal, had nevertheless appeared on notice to oppose the order being made as to costs against them, they were liable to indemnify the plaintiff so far as he had been ordered to pay the first defendants' costs at the trial; but with regard to the costs of the appeal no order would be made against the second defendants.

*Bullock v. London General Omnibus Co.* (1907, 1 K. B. 264) followed.—*RICHERS v. LONDON GENERAL OMNIBUS CO., C.A.*, 337.

2. *"Issue"—Separate issue—R.S.C., 1883, ord. 65, rr. 1, 2—Companies (Consolidation) Act, 1908 (8 Ed. 7, c. 69), s. 84.*—The plaintiff sued the company and certain directors to recover damages for having been induced to subscribe for shares by certain alleged false representations in the prospectus of the company. The directors, in their defence, denied that statements alleged to be false were untrue and further pleaded the statutory defence that, if they were in fact untrue, they had no reason to believe they were false. At the trial the jury found, *inter alia*, (1) that the statements of which the plaintiff complained were false; and (2) that the present respondent and another director had every reason to believe that they were true. The Judge, upon these findings, directed judgment to be entered for these two directors with costs. On taxation the plaintiff contended that the two findings were in respect of separate issues, and that he was only liable to pay to the defendant the costs of that issue on which he had succeeded.

Held (Bray, J., dissenting), that the findings were not in respect of separate issues, and therefore the plaintiff was not entitled to any costs against the defendant.

Decision of *Howell v. Dering* (1915, 1 K. B. 54) approved and followed.—*BIRD v. STANDARD OIL CO., C.A.*, 189.

3. *Payment into court with a denial of liability—Recovery of less than amount paid in—Costs of issue found for plaintiff—R.S.C., ord. 22, rr. 1, 6; ord. 65, rr. 1, 2.*—A plaintiff sued the defendants for negligence. The defendants paid money into court with a denial of liability. The plaintiff proceeded to trial. The jury found the defendants were negligent and assessed the damages at less than the sum paid into court. Lawrence, J., ordered the plaintiff to pay the defendants' costs of the issue of negligence, not being satisfied that the plaintiff had reasonable grounds, within R.S.C., ord. 22, r. 6, for not accepting the sum paid in. The plaintiff appealed and asked for a new trial on the ground that the quantum of damages was inadequate, and also that he ought not to have been ordered to pay the costs of the defendants on the issue on which he succeeded.

Held, that the plaintiff, although not entitled to be paid the costs of the issue on which he had succeeded, had wrongly been ordered to pay the defendants' costs of that issue, and the appeal as to costs must be allowed.

*Winkle & Co. (Limited) v. Gent & Son* (31 R. P. C. 473) held not to apply to the present case.—*DAVIES v. EDINBURGH LIFE ASSURANCE CO., C.A.*, 680.

4. *Security for costs—Suing as administrator—Agent for person out of the jurisdiction.*—1. A person clothed with a representative capacity, properly so called, should not be ordered to give security.

2. An attorney for a person resident out of the jurisdiction, although selected by the person so residing out of the jurisdiction, who will benefit by the success of the action which such attorney was to institute when appointed administrator with the will annexed, is clothed by the Probate Division, acting under statutory powers, with a representative capacity.

It makes no difference that as a matter of practice the Probate Division does not in fact inquire into the solvency of persons asking for letters of administration as attorneys for persons abroad, since that in itself, although possibly calling for a modification of the practice of the Probate Court, does not constitute an answer to the point that a court of competent jurisdiction has clothed the plaintiff with a representative character.—*RAINBOW v. KITTOE, Sargant, J.*, 338; 1916, 1 Ch. 313.

5. *Solicitor's lien—Chancery and King's Bench action—Same subject-matter—Set-off in equity—R.S.C., ord. 65, r. 14.*—There is jurisdiction in equity to set off the costs of a Chancery action against the costs of a King's Bench action, both actions being between the same parties and arising out of the same subject-matter.

*Bake v. French* (1907, 1 Ch. 428), a case of "independent proceedings," and *Blakey v. Latham* (1889, 41 Ch. D. 518), a case of

an unsuccessful attempt to set off costs in a trade-mark action against costs in a patent action, are both distinguishable from this case.

The discretion of the judge should be exercised in favour of allowing the set-off where the issue in one action could have been properly raised by way of counterclaim in the other.

*Meynell v. Morris* (1911, 194 L. T. R. 667) applied.

Ord. 65, r. 14, which is interpreted in *Reid v. Copper* (1915, 2 K. B. 147), goes to shew that the old views expressed by Lord Eldon as to the sanctity of a solicitor's lien no longer obtain.—*PUDDERPHATT v. LEIGH*, No. 2, *Younger, J.*, 568.

6. *Taxation—Experts—R.S.C., ords. 65 and 27, sub-rules 29 and 38.*—There is no rule of practice that only two expert witnesses are allowed on each side in actions in which such witnesses are called.

An expert who is called without protest and listened to by the Court ought to have his costs allowed unless there is some very special reason to the contrary.—*MAXIM v. GODSON, Neville, J.*, 77; 1916, 1 Ch. 21.

7. *Taxation—Solicitor's costs—"One-sixth" rule—Action for indemnity of a trustee—R.S.C., 1883, ord. 65, r. 27, sub-rule 38b.*—Where a trustee of certain leasehold property was declared in an action which he brought against the owners to be entitled to an indemnity for all claims respecting the property, with a reservation of his right to have the indemnity enforced, and the order directed that his costs, charges and expenses as trustee should be taxed, and the result of the taxation was that his bill was reduced by more than one-sixth thereof,

Held, that the taxing master was wrong in applying ord. 65, r. 27, sub-rule 38b, and disallowing the solicitor's costs of drawing and copying his bill and attending the taxation.

Held, further, that the order really directed payment of the costs out of the land in question, although the steps for giving effect to the order were to be taken separately under the "liberty to apply," and that it was not a bill of costs "payable out of a fund or estate (real or personal) or out of the assets of a company in liquidation."

*Simmons v. Simmons* (39 SOLICITOR'S JOURNAL, 673) distinguished.—*BUCHAN v. EYRE, Sargant, J.*, 46; 1915, 2 Ch. 474.

See also Administration.

#### COUNTY COURT:—

1. *Costs on higher scale—Question of importance to a class or body of persons—County Courts Act, 1888, s. 119.*—In an action by a wife to recover £3 arrears of maintenance under a separation deed which contained a *dum casta* clause, the husband alleged that the plaintiff had committed adultery, and consequently was not entitled to recover. The county court judge held that the defendant's allegations were without foundation and gave judgment for the plaintiff, and he certified for costs on the higher scale, on the ground that the action was "of importance to wives as a class or body of persons" within the meaning of section 119 of the County Courts Act, 1888.

Held, on appeal, that the county court judge had no jurisdiction to make the order, the question litigated not being of importance to a class or body of persons.—*DAY v. DAY, K.B.D.*, 354.

2. *Judge misdirecting himself—Jurisdiction to order new trial—County Courts Act, 1888, s. 93.*—A county court judge who has heard an action without a jury, has jurisdiction under section 93 of the County Courts Act, 1888, to order a new trial if he is of opinion that he has made a mistake and misdirected himself.—*SANATORIUM (LIMITED) v. MARSHALL, K.B.D.*, 568; 1916, 2 K. B. 67.

3. *Jurisdiction—Defendant director of a company—Action commenced in district in which company's offices situated—Defendant not "carrying on his business" within the district—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 74.*—The mere fact that a defendant is a director of a company does not make him a person carrying on his business within the district in which the company's registered offices are situated, within the meaning of section 74 of the County Courts Act, 1888; he is therefore not liable to be sued in the county court for that district.—*CAIN v. BUTLER, K.B.D.*, 539; 1916, 1 K. B. 759.

4. *Payment into court—Action for negligence—Notice denying liability—Admission of negligence—Denial of damage—Form of notice—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 107—County Court Rules, 1903 and 1914, ord. 9, r. 12.*—In an action in the county court for damages for negligence, the defendants paid into court a sum of £40, with the following notice:—"Take notice that the defendants admit that the accident was caused through their negligence, but that they deny the alleged damage, and, while in this manner denying liability, they bring into court the sum of £40, and £2 9s. 10d. in respect of costs, and say that this sum is sufficient to satisfy the plaintiffs' claim." The plaintiffs

recovered the amount paid into court and no more, and claimed to deprive the defendants of their costs incurred after the date of payment into court, treating the notice as invalid, and the payment into court as non-existent.

Held, that although the defendants had by their notice admitted negligence, they had nevertheless denied damage, which was the gist of the action. Having denied damage, the defendants' notice was good and valid, and entitled them to the costs of the action incurred after the date of the payment into court.

*Critchell v. London and South Western Railway Co.* (1907, 1 K. B. 850) distinguished.—*MUNDY (LIMITED) v. LONDON COUNTY COUNCIL, C.A.*, 587; 1916, 2 K. B. 331.

5. *Practice—Remitted interpleader issue—Jurisdiction to try therewith claim for damages—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 157, 161—County Court Rules, ord. 27, r. 8; ord. 33, r. 11.*—By ord. 33, r. 11, of the County Court Rules, no claim for damages is to be allowed in an interpleader issue remitted from the High Court to the county court.

Held, that this rule is not *ultra vires*.—*SALBSTEIN v. ISAACS & SONS, K.B.D.*, 106; 1916, 1 K. B. 1.

#### CRIMINAL LAW:—

1. *Conviction for neglect of child—Subsequent death of child—Charge of manslaughter—Autrefois convict—Whether such plea good—Children Act, 1908 (8 Ed. 7, c. 67), s. 12.*—A plea of autrefois convict cannot be successfully raised by a person charged with the manslaughter of a child in his care with regard to whom he has already been convicted—the child at the time of such conviction not having died—of wilful neglect under section 12 (1) of the Children Act, 1908, although section 12 (4) gives the jury power, on the trial of a person over sixteen years of age, for the manslaughter of a child of whom that person had the custody, charge or care, to return a verdict of wilful neglect under section 12 (1). Such a verdict would not be open to them where the prisoner had already been charged and tried under that sub-section.—*REX v. TONKS, C.C.A.*, 122; 1916, 1 K. B. 443.

2. *Evidence—Corroboration of evidence of accomplice—Larceny.*—On the trial of a prisoner for larceny evidence was given for the prosecution by two accomplices. The only corroboration of their evidence was that of the wife of a third accomplice who did not himself give evidence. The wife had taken no part in the crime.

Held, that this was corroboration on which the jury were entitled to act, and that it was not necessary for the judge to give any warning to the jury as to the weight to be given to her evidence. Where corroboration is required by common law, the corroborative evidence need not be evidence implicating the accused.—*REX v. WILLIS, C.C.A.*, 514; 1916, 1 K. B. 933.

3. *Evidence—Statement by one prisoner—Read over to second—Statements by second prisoner in answer—Admissibility.*—Where two or more prisoners are charged jointly, and the police, on charging them, read over a statement made by one of them to a second, and the second prisoner, in consequence, makes a statement which amounts to an admission, evidence of the same is, on the authorities, admissible; but it is a practice which is to be condemned, as it amounts to a form of cross-examination after arrest by the police, and therefore the judge at the trial ought to refuse to admit evidence that the statement by the first prisoner was read over, if he is satisfied that it was done for the purpose of obtaining an admission or confession from the second.—*REX v. HANCOX, C.C.A.*, 76.

4. *Gross indecency with male persons—Evidence—Corroboration of accomplices—Nature and extent—Material particular implicating the accused.*—It is a rule of practice at common law to warn juries of the danger of convicting a prisoner on the uncorroborated evidence of an accomplice. The evidence in corroboration must be independent testimony, which affects the accused by connecting, or tending to connect, him with the crime; that is, it must be evidence which confirms in some material particular, not only the evidence that the crime has been committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration required is therefore the same in such cases as it is in cases where corroboration is required by statute.—*REX v. BASKERVILLE, C.C.A.*, 696.

5. *High treason—Adhering to King's enemies elsewhere than in the King's realm—Treason Act, 1351 (25 Ed. 3, st. 5, c. 2).*—It is high treason within the meaning of the Treason Act, 1351, to give aid and comfort to the King's enemies outside the King's realm, even though the accused is himself outside the King's realm at the time he gives such aid and comfort, and he can properly be convicted under that statute of adhering to the King's enemies elsewhere than in the King's realm.—*REX v. CASEMENT, C.C.A.*, 656.



6. *Murder—Prisoner unable to understand English—Evidence not interpreted—Prisoner defended by counsel—No application to have evidence interpreted.*—Where a prisoner who understands little or no English is tried for a criminal offence and is undefended by counsel, all the evidence at the trial should be interpreted to him. If defended by counsel the safer course is that the evidence should be interpreted unless the prisoner or his counsel are willing to dispense with the interpretation and the judge assents to such a course. He should not assent unless he is satisfied that the prisoner knows the nature of the case which is made against him, and in any case any substantial departure from, or addition to, the evidence appearing on the depositions should be interpreted to the prisoner, even if his counsel does not apply for it to be done.

The appellant, a Chinaman, who understood hardly any English, was convicted of murder. He was defended by counsel at the trial, who did not apply that the evidence should be interpreted, nor was this done.

Held, that, as the evidence at the trial did not differ from that given at the police court, which had been interpreted, no substantial miscarriage of justice had occurred. The appeal was therefore dismissed under section 4 (1) of the Criminal Appeal Act, 1907.—*REX v. LEE KUN, C.C.A.*, 158; 1916, 1 K. B. 337.

7. *Possession of house-breaking implements by night—Tools of prisoner's trade—Lawful excuse—Onus of proof—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 58.*—It is a lawful excuse within the meaning of section 58 of the Larceny Act, 1861, on a charge of being in possession of house-breaking implements by night, that the implements in question were the tools of the trade followed by the prisoner and his own property. If, however, other circumstances are proved in evidence from which it is open to the jury to infer that he intended to use the tools for a felonious purpose, they may properly convict him.—*REX v. WARD, C.C.A.*, 27; 1915, 3 K. B. 698.

#### DEED OF ARRANGEMENT:—

*Validity—Execution by person authorized by power of attorney—Affidavit verifying execution—Assent of majority of creditors in number—Creditors for sums not exceeding £10—Registration of power of attorney as deed of arrangement—Application by debtor for declaration that deed of arrangement is void—Jurisdiction of court—Conduct of debtor preventing him from relying on invalidity of deed—Deeds of Arrangement Act, 1914 (4 & 5 Geo. 5, c. 47), ss. 1, 3, 5, 23.*—A debtor, while on active service abroad, gave his sister a power of attorney to execute a deed of arrangement with his creditors. The sister executed the deed, and filed the affidavit required under section 5 of the Act to be executed by the debtor when presenting the deed for registration. The trustee proceeded to wind up the estate with the implied approval of the debtor. On the debtor's return home he applied to have the deed set aside as invalid. His application was dismissed by the judge of the county court at Shrewsbury.

Held, by the Divisional Court, that the Court had jurisdiction to hear the application, but that the debtor had estopped himself by his conduct from contending that the deed was invalid.

Held, by the Court of Appeal, that the Court had no jurisdiction to hear the application, as it was not an application for the enforcement of the trusts of the deed or for the determination of any question under the deed within section 23 of the Deeds of Arrangement Act, 1914.—*RE WILSON, C.A.*, 90; 1916, 1 K. B. 382.

#### DEED OF GIFT:—

*Non-communication to volunteers—Possession retained by grantor—Subsequent sale—Concealed fraud—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 26.*—Where a testator had executed a deed of gift to his sons of certain lands and had not disclosed such deed, and had continued in possession of the properties, and sold parts thereof, and had subsequently made a will disposing of these lands,

Held, (1) that the sale of the part of the property was not a fraud by the testator, and he had not put himself in the position of a trustee of the purchase moneys.

(2) That there had not been "concealed fraud" within section 26 of the Real Property Limitation Act, 1833.

(3) That there had not been fraud impossible of discovery within twelve years before action brought within *Willis v. Earl Howe* (1893, 2 Ch. 545).

(4) This was not a designed fraud within *Re McCallum* (1901, 1 Ch. 143).—*RE LEVESLEY, Peterson, J.*, 142.

#### DEFENCE OF THE REALM:—

*Seizure and destruction of documents—Proceedings held in camera—Jurisdiction of magistrate—Defence of the Realm Con-*

*solidation Act, 1914 (5 Geo. 5, c. 8), s. 1 (1) (5)—Defence of the Realm (Amendment) Act, 1915 (5 Geo. 5, c. 34), s. 1—Defence of the Realm (Consolidation) Regulations, 1914, 27, 51a.*—The object of the Defence of the Realm Acts, and the Regulations issued thereunder, being to prevent the publication of anything prejudicial to the safety of the realm, the provision in Regulation 51a for the hearing *in camera* of any proceedings under that Regulation is not *ultra vires*; and, as proceedings under Regulation 51a are not a "trial" within the meaning of section 1 (5) of the Defence of the Realm Consolidation Act, 1914, a magistrate has power to exclude the public from such proceedings.—*EX PARTE NORMAN, K.B.D.*, 90.

#### DIVORCE:—

1. *Desertion—Deed of separation.*—Where husband and wife are living apart under a separation deed, desertion can only commence when both parties have repudiated the deed.

A husband having repudiated a deed of separation under which he and his wife were living apart, and having paid nothing under it for over four years, the wife sued for arrears under the deed and recovered judgment. She afterwards presented a petition for divorce, alleging desertion and adultery.

Held, that the wife having elected to treat the deed as subsisting, there had been no desertion.

*Hussey v. Hussey* (29 T. L. R. 673) distinguished.—*ROE v. ROE, P.D.*, 495; 1916, P. 163.

2. *Desertion—Deed of separation.*—The Court granted a decree *nisi* for divorce on the petition of the wife, on the ground of the husband's adultery and desertion, notwithstanding the execution by the parties of a deed of separation by which they agreed to live apart, holding that the husband had, by his conduct, repudiated the deed.

*Hussey v. Hussey* (29 T. L. R. 673) followed.—*SMITH v. SMITH, P.D.*, 25; 1915, P. 288.

3. *Evidence by affidavit—Undefended suit—Charges of adultery with men unknown—Motion to dispense with co-respondents—Death of deponent—Leave to read affidavit.*—In an undefended divorce suit, where the husband charged the wife with adultery with men unknown, an affidavit of one of the witnesses had been filed in support of the petitioner's motion for leave to dispense with naming co-respondents. The deponent having since died, the Court allowed the affidavit to be read at the hearing in support of the petitioner's case.—*WILLIAMS v. WILLIAMS, P.D.*, 528; 1916, P. 130.

4. *Husband's petition—Petitioner a poor person—Alimony pendente lite—Security for wife's costs—R.S.C., ord. 16, rr. 22-31.*—The Court may order a husband, who sues as a poor person for the dissolution of his marriage, to find security for his wife's costs and to pay her alimony *pendente lite*.—*GRINHAM v. GRINHAM, P.D.*, 176; 1916, P. 1.

5. *Petitioner suing as poor person—Decree nisi rescinded—Costs of King's Proctor's intervention—R.S.C., ord. 16, r. 29.*—A petitioner who sues for divorce as a poor person and obtains a decree *nisi*, may, if the decree *nisi* is afterwards rescinded, be ordered to pay the costs of the King's Proctor's intervention.—*ROBERTS v. ROBERTS, P.D.*, 322; 1916, P. 187.

6. *Practice—Motion to dispense with co-respondent—Respondent's right to oppose.*—In a suit for divorce in which the husband is petitioner the respondent wife has no *locus standi* to oppose his motion for leave to dispense with naming a co-respondent.—*DORSON v. DORSON, P.D.*, 387; 1916, 1 P. 110.

7. *Restitution of conjugal rights—Discretion of the Court—Grounds for refusing relief in the absence of any matrimonial offence—Petitioner's alleged habitual intemperance.*—In the absence of proof of any matrimonial offence on the part of the petitioner, the Court, in the exercise of its discretion to grant or to refuse a decree of restitution of conjugal rights, will not refuse relief unless the conduct of the petitioner has rendered it impossible for the parties to live together, and has entitled the respondent to desert the petitioner.

Habitual intemperance on the part of the wife, with its usual concomitants—untrue accusations and hysterical outbursts of violence—does not constitute reasonable cause for the husband's leaving her, and is no answer to the wife's petition for restitution of conjugal rights.

A husband, in answer to his wife's suit for restitution of conjugal rights, alleged that he had left her because of her habitual intemperance. She had been addicted to drink since the year 1910, and while under the influence of drink had repeatedly threatened and once attempted suicide, and had accused him of attempted murder.

Held, that these allegations, if true, were no answer to the wife's petition.

*Beer v. Beer* (54 W. R. 564) distinguished.—*GREENE v. GREENE*, P.D., 620; 1916, P. 188.

8. *Separation deed*.—A husband and wife entered into a deed of separation whereby they mutually agreed that neither party should institute proceedings of any kind against the other in any way relating to the relationship between them of husband and wife; but by a later clause it was agreed (*inter alia*) that if the marriage should be dissolved, or if the parties should be judicially separated by reason of any misconduct occurring after the date of the deed, then all the covenants and provisions contained in the deed should become void. The husband, it was alleged, had been guilty of cruelty before, and of adultery after, the date of the deed. The wife presented a petition for divorce on the grounds of the husband's cruelty and adultery.

Held, that the clause in the deed as to the institution of proceedings, though it could only operate as a bar to proceedings instituted on grounds which had arisen before the date of the deed, prevented the wife from relying on the husband's cruelty, which was antecedent to the deed; and although the subsequent adultery of the husband would entitle the wife to a judicial separation, and thereupon, the covenants in the deed becoming void, she might, on a subsequent petition, obtain a dissolution of marriage, yet the Court would not, by granting in the present petition a decree *nisi* dissolving the marriage, relieve her from the necessity of taking that circuitous mode of obtaining relief.

*Dowling v. Dowling* (1898, P. 228) and *Bourne v. Bourne* (1913, P. 164) not followed.—*LIPMAN v. LIPMAN*, P.D., 157; 1916, P. 25.

9. *Separation deed—Covenant not to sue for antecedent offences—Circuity of proceedings*.—A husband and wife entered into a deed of separation whereby (*inter alia*) the wife covenanted not to commence any proceedings against the husband in respect of any misconduct or offence committed by him before the date of the deed; but by a later clause it was agreed that, if the husband and wife should be judicially separated, all the covenants in the deed should become void. The husband had been guilty of cruelty before, and of adultery after, the date of the deed. The wife presented a petition for divorce, on the grounds of the husband's cruelty and adultery.

Held, that, as the subsequent adultery of the husband entitled the wife to a judicial separation, and thereupon, the covenants in the deed becoming void, she might, on a subsequent petition, obtain a dissolution of her marriage, the Court would at once grant a decree *nisi* dissolving the marriage, and would not put the wife to such a circuitous mode of obtaining relief.

*Bourne v. Bourne* (1913, P. 164) followed.

*Lipman v. Lipman* (60 SOLICITORS' JOURNAL, 157; 1916, P. 25) not followed.—*THOMPSON v. THOMPSON*, P.D., 512; 1916, P. 165.

#### DONATIO MORTIS CAUSA:—

*Promissory note of deceased—Liability of deceased's estate*.—The donor's promissory note, given under his own hand, is not a proper subject of a *donatio mortis causa*.—*RE LEAPER, Sargant, J.*, 539; 1916, 1 Ch. 579.

#### DOWER:—

*Gavelkind—Claim to assignment of dower out of the proceeds of sale of lands subject to dower*.—A dowress is not entitled as of right and against the heir to have an apportioned part of the moneys arising from the sale of lands subject to dower assigned to her.

The cases of *Re Hall's Estate* (1870, 9 Eq. 179) and *Gleeson v. Byrne* (25 L. R. Ir. 361) are cases where there was no adverse argument on the part of the heir and no opposition to the widow's claim, and are not authorities for the contrary proposition; and in the case of *Harrop v. Wilson* (34 Beav. 166) the land was taken compulsorily, and the widow having died between two dividend days her estate was held entitled to an apportionment of the dividend due on the second day. The heir is entitled to pay the dower as it accrues due in the same manner as if the purchase moneys were still land, which they, in fact, notionally remain.

Where the lands are gavelkind land, there is an *à fortiori* reason why the widow has not the right claimed in this action, because she is only entitled during widowhood and chastity.—*RE WILSON, WILSON v. CLARK, Sargant, J.*, 190; 1916, 1 Ch. 220.

#### EASEMENT:—

*Watercourse—Underground pipe—Devise and severance of two tenements—Implied grant—Right of passage—Precarious enjoyment as against owner of source*.—"Apparent and continuous easement"—*Twenty years' user—Derogation from grant—Purchaser for value without notice*.—Where the owner of two tenements, A and B, grants, either by conveyance or devise, A to one person and B to another, and at the time of such severance A was supplied with

water from an outside source by means of a pipe or watercourse passing through B, the grantee of A will take the property with the right of passage of water through B, and the grantee of B subject to such right, whether he has notice of it or not. The fact that the supply of water may be precarious, and that no definite right can be established as against the owner of the spring or source, does not render the right of passage precarious as between the owners of A and B.

The rule that the acquisition and enjoyment of an easement must be *nec vi, nec clam, nec precario* applies to acquisition by prescription, but not by grant.

The common law rule that a grantor may not derogate from his own grant applies to an implied grant, and is not affected by the equitable defence of purchaser for value without notice.

*Dictum* of Lord Alinger in *Arkerwright v. Gell* (5 M. & W., at p. 233) approved of.—*SCHWANN v. COTTON, C.A.*, 654.

#### EMERGENCY LAW:—

*Mortgage—Foreclosure action—Summons for directions—Adjournment of summons—Step in proceedings—Action stayed for duration of war—Retrospective operation—Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97)*.—An action was commenced in July, 1915, to foreclose a mortgage, dated in 1910, and the summons for directions was issued in November. On 23rd December the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, became law. The mortgage was of a class to which the Act was applicable.

Held, that the Act was retrospective in its operation, and that an attendance by the plaintiff on the summons for directions in January, 1916, was taking a step to enforce foreclosure within the meaning of the Act, and the action was therefore stayed until six months after the close of the war.—*WELBY v. PARKER, C.A.*, 417.

#### EXECUTOR:—

*Coppyholds—Direction to pay debts—General devise—Bequest to named persons—Direction to sell and divide—Implied power in executors to sell*.—Where a testator appointed executors and directed them to pay his debts, and gave and bequeathed all his real and personal estate, which included copyholds, to seven named persons, and directed that everything should be sold, without saying by whom, and divided among these seven persons,

Held, that the devise in terms to the seven beneficiaries did not prevent the Court from placing upon the will the construction that the persons to sell are the executors.

*Patton v. Randall* (1820, 1 J. & W. 189) is not an authority for the general proposition that where lands are devised direct to several in fee, with a direction superadded that they shall be sold, there is no implied power of sale in the executors.

On the construction of this will the executors have by necessary implication a legal estate in the copyholds to enable them to discharge the duties of the will imposed upon them by virtue of the charge of debts upon the copyholds, and accordingly to sell.

*Re Davies to Jones* (1883, 24 Ch. D. 190) applied.

The purchaser is entitled to be admitted direct without any previous admittance of the executors or the beneficiaries or any other person.

*Holder v. Preston* (1769, 2 Wils. 400) applied.—*SISSONS v. CHICHESTER-CONSTABLE, Younger, J.*, 605.

See also *Breach of Promise; Costs; Limitations, Statute of; Revenue; Will*.

#### FRIENDLY SOCIETY:—

*Loan to member—Maximum exceeded—Statutory prohibition—Illegality—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 46, 84, 89*.—Section 46 of the Friendly Societies Act, 1896, provides that "a society shall not make any loan to a member on personal security beyond the amount fixed by the rules"; and section 84 provides that it shall be an offence to do anything forbidden by the Act. Consequently a loan in excess of the amount fixed by the rules is an illegal transaction, and the money cannot be recovered.—*LOUGHER v. MOLYNEUX, K.B.D.*, 605; 1916, 1 K. B. 718.

#### HABEAS CORPUS:—

*Naturalized British subject—Detention in internment camp—Validity of regulation empowering detention—Defence of the Realm Consolidation Act, 1914 (5 Geo. 5, c. 8), s. 1 (1)*.—By the Defence of the Realm Consolidation Act, 1914, it is provided that "His Majesty in Council has power . . . to issue Regulations for securing the public safety and the defence of the Realm."

Purporting to act in pursuance of the power so given, Regulations, dated 10th June, 1915, were made by the Home Secretary, of which Regulation 14 (b) was as follows:—"Where on the recommendation of a competent naval or military authority or of



one of the advisory committees hereinafter mentioned, it appears to the Secretary of State that for securing the public safety or the defence of the realm it is expedient, in view of the hostile origin or associations of any person that he should be subjected to such obligations and restrictions as are hereinafter mentioned, the Secretary of State may by order require that person forthwith, or from time to time, either to remain in, or to proceed to and reside in, such place as may be specified in the order, and to comply with such directions as to reporting to the police, restriction of movement, and otherwise as may be specified in the order, or to be interned in such place as may be specified in the order."

The Divisional Court having discharged a rule nisi for *habeas corpus* obtained at the instance of an interned naturalized British subject, the applicant appealed to the Court of Appeal, and submitted that the liberty of the subject could not have been left in the hands of the executive, and that the Act of 1915, not specifically directing that a subject might be interned for the purpose of securing the public safety or the defence of the realm, the Regulation under which he had been so interned was *ultra vires*.

Held, dismissing the appeal, that the decision of the Divisional Court was right; that the Regulation in question was not *ultra vires* the powers conferred by the Defence of the Realm Act, 1914, and that the applicant for the rule was lawfully detained.—*ZADIG v. HALLIDAY, C.A.*, 290.

See also *Alien Enemy*.

## HIGHWAY:—

1. *Bridge over railway—Maintenance—Measure of obligation—Heavy motor traffic—Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20)—Locomotive Act, 1861 (24 & 25 Vict. c. 70)—Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36)—Motor Car Act, 1903 (3 Ed. 7, c. 36).*—A railway company by statutory authority interrupted a highway by the construction of a railway. The statute required the company to build and maintain a bridge to carry the highway over the railway. Subsequently heavier traffic than at the time the bridge was built came, or might reasonably be expected to come, upon the highway. The railway company affixed a notice to the bridge under the provisions of the Motor Car Act, 1903, to the effect that the bridge was not sufficient to carry heavy traffic.

Held, Lord Haldane dissenting, that the obligation to repair and maintain the bridge imposed by the private Act authorizing its erection referred to a bridge able to carry the road which the railway crossed, and that was the road determined at the moment when the railway was built. It was the bridge constructed in conformity with the Act that the company was bound to maintain, and they were subject to no further or added liability by reason of the fact that the character of the traffic now using the road had changed.

Decision of the Court of Appeal (59 SOLICITORS' JOURNAL, 578; 13 L. G. R. 998) affirmed.—*ATTORNEY-GENERAL v. GREAT NORTHERN RAILWAY, H.L.*, 665.

2. *Extraordinary traffic—Damage by traction engines to country road not adapted for such traffic—Main road rendered dangerous for traction engines by local authority—Country road only alternative route—Country road not adapted for traffic—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 27), s. 23.*—In an action to recover damages for extraordinary expenses incurred in repair of a country road, the defence was raised that the country road was the only alternative route by which the defendants could send their engine-drawn trucks along, as the main road had been rendered dangerous by reason of its having been paved with granite setts, and therefore the damage and expense (if any) arose from the failure of the local authority to maintain the country road up to the standard required for traction traffic.

Held, that extraordinary traffic was a question of fact, and that as the country road was not adapted to the traffic, and as the traffic was not such as was ordinarily carried upon the road, it remained extraordinary traffic until that road was adapted to it, and the local authority were entitled to recover in the action.

Decision of Court of Appeal (reported 12 L. G. R. 1021, 78 J. P. 425) affirmed.—*BARNSELY CO-OPERATIVE SOCIETY v. WORSBOROUGH DISTRICT COUNCIL, H.L.*, 25; 1916, 1 A. C. 291.

3. *Negligence—Nuisance—Sheep straying on highway—Defective fence—Accident to vehicle—Liability of owner.*—While a motor-car was being carefully driven at a reasonable speed along a highway, it encountered some sheep, the property of the defendant, which had escaped from his field through a defective hedge. One of the sheep having collided with car, and thereby caused it serious damage, in an action by the owners of the car to recover damages for negligence, or nuisance.

Held, that there was no duty at common law imposed on an

owner or occupier of land near a highway to prevent sheep or other naturally harmless animals from straying on the highway, and therefore that the defendant was not liable either for negligence or nuisance.

*Cox v. Burbidge* (1863, C. B. N. S. 430) applied.—*HEATH'S GARAGE v. HODGES, C.A.*, 554; 1916, 2 K. B. 370.

4. *Obstruction by posts erected under statutory authority—Reduction in lighting—Taxi-cab collides with post in the dark—Action by driver for damages.*—The defendants some years ago erected at the entrance to one of their stations gates and posts and subsequently obtained an Act to entitle them to maintain such gates and posts. By regulations made under the Defence of the Realm Act, 1914, the lighting was so reduced and the place was so dark that a taxi-cab driver when driving into the station was unable to see one of the posts, and ran his cab into it. In an action to recover damages for injury to the cab the jury awarded the plaintiff £50.

Held, that, although by virtue of their private Act, the defendants had a statutory right to maintain the gates and posts, yet that right did not absolve them from the duty to act with reasonable care for the protection of the public in circumstances which might from time to time be existing. And as they had not taken any means, in view of the regulations for lighting the streets, to protect the public, they had committed a breach of duty, in respect of which the plaintiff was entitled to recover.

Decision of Darling, J. (noted ante, p. 316), affirmed.—*HEWLETT v. GREAT CENTRAL RAILWAY CO., C.A.*, 428.

5. *Sewer—Defective gully—Negligence—Combined capacity of road and sewer authority—Action for personal injuries caused by riding bicycle over defective gully—Misfeasance—Non-feasance.*—In an action to recover damages for personal injuries, sustained, it was alleged, owing to a defective gully in a public highway vested in the defendants.

Held, that the action failed, because the plaintiff had not established any misfeasance on the part of the defendants.

Decision of Scrutton, J. (79 J. P. 309), affirmed.—*PAPWORTH v. BATTERSEA BOROUGH COUNCIL, C.A.*, 120; 1916, 1 K. B. 583.

## HUSBAND AND WIFE:—

*Alimony—Judicial separation of husband and wife—Arrears due at husband's death—Husband's estate solvent—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37.*—Where a husband's estate is not insolvent it is liable for arrears of alimony due under an order made in the Divorce Division.

Although future payments are not a "debt of liability" within section 37 of the Bankruptcy Act, 1883, and are not provable in bankruptcy, arrears of such payments constitute a debt enforceable under section 5 of the Debtors Act, 1869, by attachment of the husband, and the arm of justice is not so short that a court of equity must leave the wife without remedy merely because the husband dies.

The cases of arrears under a bastardy order only deal with a particular statutory provision, and are decided in accordance with the principle of the procedure under the Bastardy Acts, and have no application to cases of arrears of alimony which were held in very ancient times by the old Ecclesiastical Courts to be a judicial assessment of the husband's liability to the wife.

*Re Harrington* (1908, 2 Ch. 687) not applicable.—*RE STILLWELL, Sargant, J.*, 322; 1916, 1 Ch. 365.

## INDIAN APPEALS:—

*Indian appeals—Delay—Costs.*—In future a successful appellant in an Indian appeal will not be allowed costs when there has been great delay in prosecuting the appeal and no adequate explanation of the delay is given.—*NANDA LAL, &c. v. JAGAT KISHORE, &c., P.C.* 638.

## INFANTS:—

*Maintenance—While not in custody of father—Discretion of trustees—Repugnancy—Public policy.*—By clause 9 of a settlement, dated 31st August, 1910, it was provided that no part of the income of an infant's share was to be paid or applied for the maintenance and education or otherwise for the benefit of the infant whilst he was in the custody or control of his father, or whilst his father should have anything to do with the education or bringing-up of such child. The infant was in the custody of his father, who declined to relinquish such custody.

Held, that the clause was neither repugnant nor contrary to public policy, and therefore the trustees had no discretionary power of maintenance which they could exercise in the infant's favour.—*RE BORWICK'S SETTLEMENT, Eve, J.*, 567; 1916, 2 Ch. 304.

See also *Settlement*.

## INSURANCE:—

1. *Accident—Wife to be entitled to benefits—Bequest of residue to wife for life—Claim by widow to be entitled absolutely.*—A testator insured his life for £1,000, and by his will gave the residue of his property to his wife for life, with a gift over on her death. One of the terms of the contract was that the wife of the insured person should be entitled to the benefits of the insurance. The widow claimed to be entitled to the £1,000 absolutely.

Held, that the £1,000 formed part of the residuary estate of the testator, and passed to the plaintiff as his sole executor.—*RE LAMBERT, Eve, J.*, 273.

2. *Life—Petition for payment out of policy moneys in court—Foreign domicile—No representation constituted in England—Revenue Act, 1884 (47 & 48 Vict. c. 62), s. 11—Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 19—R.S.C., 1883, ord. 54 (e), r. 7.*—A French subject, resident in Egypt, mortgaged his policies to the insurance company, and subsequently assigned them to L. C. to secure a further loan. On his death the insurance company, after deducting what was due to them, paid the balance of the policy moneys into court, as there was a dispute as to who was entitled to them. L. C. obtained judgment in the French Consular Court in Egypt that she was the only and lawful assignee of the policies.

Held, on a petition by her for payment out of the policy moneys, that the petition need not be served on the other claimants, that it was not necessary to take out representation here to the French subject, and that no duty was payable.—*RE LOIR'S POLICIES, Neville, J.*, 445.

3. *Marine—Non-disclosure of material facts—Deck cargo—"Held covered" clause 4, in institute cargo clauses—Error in description—"Including all liberties as per contract of affreightment—Institute cargo clauses, clause 7.*—A motor-car was shipped by a packing company acting as the agents of the owner for packing, forwarding, and insuring it for carriage to Messina; the shipowners having "reserved to themselves the liberty to ship goods of any description on deck." The company did not disclose to the underwriters that the car was to be carried on deck. The car was wrecked by the action of the sea, and the underwriters refused to pay. In an action by the car-owner for damages against the packing company for not having obtained a valid insurance, the defendants pleaded that the policy was valid, and that under the "held covered" clause and clause 7 of the institute cargo clauses the underwriters were liable to pay the loss.

Held, that the non-disclosure was not an error of description within the "held covered" clause; nor was a right given of shipping the car on deck under "liberties" in clause 7.—*HOOD v. WEST END MOTOR CAR PACKING CO., K.B.D.*, 667.

4. *Marine—Restraint of princes—Restraint by government of assured—Cargo destined for Hamburg—Adventure rendered illegal—Ships diverted to British ports—Notice given underwriters—Claim as for constructive total loss—Marine Insurance Act, 1906 (6 Ed. 7, c. 41), s. 60.*—Two British ships sailed from the River Plate with cargoes shipped by an English firm for delivery at Hamburg before the outbreak of war between England and Germany. Of that fact the master of one of the ships received notice from his owners by cable in the course of the voyage, and, in pursuance to orders to that effect, put into a British port. The other ship, on arriving in the Channel, was signalled by a French cruiser to go into a British port, which she did, and her master there learnt that England was at war with Germany. The ships having discharged their cargoes at ports in the United Kingdom, the shippers gave notice to the underwriters of abandonment, and sued upon the policies, which each contained the usual clause that restraint of princes was one of the perils insured against as for a total loss.

Held, that the shippers were entitled to recover under the policies.

Decision of Court of Appeal (59 SOLICITORS' JOURNAL, 456; 1915, 2 K. B. 781) affirmed.—*BRITISH AND FOREIGN MARINE INSURANCE CO. v. SANDAY, H.L.*, 253; 1916, 1 A. C. 650.

5. *Marine—Time policy—"Perils of the sea"—Institute time clauses—"Inchmaree" clause—Marine Insurance Act, 1906 (6 Ed. 7, c. 41), s. 30, Schedule I, r. 12.*—While a boiler was being lowered by a floating steam crane into the hold of a ship lying in a dock, a part of the crane's tackle broke, causing the boiler to fall into the hold of the ship and thereby damaging the hull. The ship was insured under a time policy in the ordinary form with the institute time clauses attached. In an action under the policy the Court of Appeal held (1) that the loss was not caused by a peril of the sea; (2) that clause 3 of the institute time clauses did not enlarge the risks insured by the policy; and (3) that the risks specifically mentioned in clause 7 (the Inchmaree clause) were not extended to matters *ejusdem generis* by the general words in the body of the policy. Decision of Court of Appeal affirmed.

"Inchmaree" clause considered and explained.—*STOTT BAL TIC STEAMERS v. MARTEN, H.L.*, 57; 1916, 1 A. C. 304.

See also National Insurance; Practice.

## KINEMATOGRAPH:—

*Premises not licensed for exhibition of inflammable films—Allegation that police visits were not bona fide—Action for trespass—Justification of entry—Cinematograph Act, 1909 (9 Ed. 7, c. 30), s. 4.*—By section 4 of the Cinematograph Act, 1909, "A constable or any officer appointed for the purpose by a county council may at all reasonable times enter any premises, whether licensed or not, in which he has reason to believe that such an exhibition as aforesaid is being or is about to be given, with a view of seeing whether the provisions of this Act, or any regulations made thereunder, and the conditions of any licence granted under this Act, have been complied with." The plaintiff gave cinematograph exhibitions at premises not licensed for music or for the use of inflammable films. He subsequently introduced a piano-organ, and he alleged that from that time police officers frequented his premises ostensibly for ascertaining if the music given at the exhibitions formed part of the attraction offered the public (in which case a music licence would have been required), but really with the object of ascertaining if inflammable films (which are more economical to use than non inflammable films) were being exhibited. He further alleged that the police had no *locus standi*, as they were not constables or other persons appointed for the purpose within section 4 of the Act of 1909. In an action against the chief constable for trespass, the jury found that the police did not enter the building with a *bona fide* belief that inflammable films were being used, and they awarded the plaintiff £100.

Held, that the verdict was against the weight of evidence, and there must be a new trial.

*Per Swinfen Eady, L.J.*: The words in section 4 of the Act of 1909, "A constable or any officer appointed by a county council," are in the alternative, and do not limit the right of entry to such constables as are appointed for the purpose by a county council.—*M'VITTIE v. TURNER, C.A.*, 238.

See also *Certiorari*; Copyright.

## LANDLORD AND TENANT:—

1. *Agreement for lease—Landlord's costs—Income tax—Set-off.*—Where a lessor has paid his solicitor the legal charges for the preparation and engrossment of an agreement for a lease, he can recover them from the tenant, except the charge for the counter-part; and the tenant is entitled to set-off the amount which he has paid for property tax, and which he has not had an opportunity of deducting from his rent.—*WHITE v. JOY, County Court*, 480.

2. *Covenant for quiet enjoyment—Disturbance caused by under-tenant of one lessee to business of another—Licence to use shop as auction-room—Possibility of, but no necessity for, nuisance—No active participation—Derogation from grant.*—The lessor of shop property in London let part of his premises to A for a long term of years, to be used only for the purposes of a restaurant, and entered into the common form of covenant for quiet enjoyment. At a later date he let an adjoining shop to B, carrying on business as a fine art dealer, and licensed him to hold auctions thereon. B having underlet to tenants, who took out the front of the shop, and held "mock-auctions" of a fraudulent character which caused much noise and disturbance.

Held (reversing *Darling, J.*), in an action by A against his lessor for breach of the covenant for quiet enjoyment, that the lessor, not having acquiesced in such a way as to amount to active participation in the nuisance, was not liable.—*MALZY v. EICHOIZ, C.A.*, 511; 1916, 2 K. B. 308.

3. *Distress—Company in liquidation—Rent payable in advance—Distress levied before winding-up commenced—Injunction.*—The Court will not, at the instance of the liquidator of a company, restrain further proceedings under a distress levied by the company's landlord before the commencement of the winding-up. The fact that the rent is payable in advance is not a circumstance rendering it inequitable that the distress should be proceeded with.

*Re Roundwood Colliery Co. (Limited)* (1897, 1 Ch. 373) applied.—*VENNER'S ELECTRICAL, & C., APPLIANCES v. THORPE, C.A.*, 27; 1915, 2 Ch. 404.

4. *Sporting rights—Covenant for quiet enjoyment—Right of landlord to cut down trees—Disturbance of game—Injunction.*—A landlord who has granted a lease of sporting rights over a wooded estate is not thereby prevented from turning the property to the best purpose for which it is suited, even though there is a covenant for quiet enjoyment in the lease. Accordingly, the landlord in such a case will not be restrained by injunction from felling and selling timber on the property.



*Jeffries v. Evans* (19 C. B. N. S. 264) and *Gearns v. Baker*, (L. R. 10 Ch. 355) followed.—*DICK v. NORTON, Eve, J.*, 321.

See also Licensing Law.

**LIBEL:—**

1. *Publication—Unintended or accidental publication—Letter opened by person other than the person to whom sent.*—The plaintiff having advertised a house for sale, his advertisement was answered by H. W. Pollard, whose son, F. W. Pollard, wrote for his father to the defendant, making inquiries regarding the plaintiff. The letter (in answer) containing the alleged libel, being sent to the son's address, was opened by the father in his son's absence and the son did not see it.

Held, that there was no publication of the libel.—*POWELL v. GELSTON, K.B.D.*, 696.

2. *Libel—Trade protection—Mutual society—Communication made bona fide to one of its members—Information given society by local agent maliciously inaccurate—Secretary acting as confidential agent of member—Action based on publication by society—Privileged occasion.*—A subscriber to a society for supplying information as to the credit of persons with whom members intended to deal applied for information as to the respondents' credit. Hadwen, who was the secretary of the society, wrote to Wilmshurst, their local agent, who was in the habit of giving the society information, and the information he supplied was inaccurate. This information was handed on in good faith by Hadwen to the inquirer. The respondents sued the society, Hadwen, and Wilmshurst jointly for libel, and obtained a verdict and judgment against Wilmshurst, who was found guilty of malice, for £750, and against Hadwen and the society, against whom malice was not proved, for £1,000. The two latter alone appealed to the Court of Appeal, asking for judgment or a new trial. The Court, by a majority (Bray, J., dissenting), held that the report was not published on a privileged occasion; but granted a new trial on the ground that the damages were excessive. On appeal to this House the appellants asked for judgment on the ground that the libel was published on a privileged occasion. At the Bar of the House the respondents consented to the judgment being set aside as against the society by reason of its being an unincorporated association, in order to facilitate the determination of the question of privilege.

Held, that Hadwen, in making the inquiry and report, had acted as the confidential agent of the inquirer, and the occasion was therefore privileged.

Decision of Court of Appeal (1913, 3 K. B. 507) reversed, and order for a new trial set aside.

Decision in *Macintosh v. Dun* (1909, A. C. 390) distinguished.—*LONDON ASSOCIATION FOR PROTECTION OF TRADE v. GREENLANDS, H.L.*, 272; 1916, 2 A. C. 15.

See also Practice.

**LICENSING LAW:—**

*Landlord and tenant—Rent in arrear—Action for possession—Right of tenant to deduct from rent claimed proportion of increase of licence duty—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38—Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 2—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), s. 18.*—The rent of certain licensed premises being in arrear, the landlord commenced an action under order 14 to recover possession and money due. The lessee admitted the arrears of rent, but said that he was entitled, under section 2 of the Finance Act, 1912, to deduct from the rent the proportion payable by the landlord of the excess licence duty he had paid, which amounted to more than the rent due.

Held, that the defendant had a right to have the proportion of the increase in duty payable by the landlord determined before the landlord was entitled to proceed with his action.—*LEWIS v. HUGHES, C.A.*, 367; 1916, 1 K. B. 831.

**LIMITATIONS, STATUTE OF:—**

1. *Action against public body—Sale of coke by corporation—Negligent delivery—Neglect "in execution of public duty or authority"—Contract entered into with private individual under general powers given by statute—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.*—Held, that the defendants, when delivering coke to a purchaser, were not acting in pursuance of any statutory duty they owed him, and therefore in respect of damages caused him by the negligence or default of the carman, the servant of the corporation, they were not protected by the privilege granted to a public authority by section 1 of the Act of 1893. Hence the action was not barred, although it had not been commenced within six months next after the act, neglect or default complained of.

Decision of Court of Appeal (reported 59 SOLICITORS' JOURNAL,

57; 1915, 1 K. B. 417, 13 L. G. R. 1) affirmed.—*BRADFORD CORPORATION v. MYERS, H.L.*, 74; 1916, 1 A. C. 242.

2. *Executrix—Debts—Insufficient personality to pay debts—Payment by executrix out of her own moneys—Right to be recouped out of real estate—Real Property Limitation Act, 1874, ss. 8, 10.*—Where a widow who was tenant for life of the real estate of her husband, and also his executrix in 1885, paid some of his debts out of her own money because his personality was not sufficient to pay them, but took no step by administration proceedings to get herself recouped out of the testator's realty for thirty years,

Held, that such a case was within section 8 of the Real Property Limitation Act, 1874, and the executor of the widow could not now recover.

The decision in *Burrell v. Earl of Egremont* (1843, 7 Beav. 205) is not applicable to such a case as this.

Held, further, that, with regard to the portion of realty bequeathed by the testator on trust for payment of debts, the creditors would now be barred by section 10 of the Real Property Limitation Act, 1874, and the widow had no greater right than that of being subrogated to the creditors, and accordingly her claim was barred.—*RE WELCH, Sargant, J.*, 368; 1916, 1 Ch. 375.

3. *Mortgage of freeholds subject to occupation lease—Rent for first seventeen years paid on execution of lease—"Estate in possession"—No profits recoverable—Mortgagee's right to foreclosure barred by lapse of time—Real Property Limitation Acts, 1833 (3 & 4 Will. 4, c. 27), s. 3; and 1874 (37 & 38 Vict. c. 57), s. 1.*—Under a lease of freehold property for twenty-one years at a rent of £50, the lessee paid the whole of the first seventeen and a half years' rent in a lump sum at the commencement of the term. The lessor subsequently mortgaged the property subject to the lease, but made default in payment of interest. More than twelve years after the date of the last payment or acknowledgment of title the mortgagees commenced foreclosure proceedings.

Held, that the mortgage was of an estate in possession, not in reversion, and therefore that time ran from the last payment, and the action was barred, notwithstanding that recovery of possession would not in fact entitle the mortgagees to immediate receipt of rents and profits.

Decision of *Eve, J.*, reversed.—*WAKEFIELD AND BARNESLEY UNION BANK v. YATES, C.A.*, 352; 1916, 1 Ch. 452.

4. *Simple contract debt—Acknowledgment of liability—Implied promise to pay.*—In an action to recover a debt due under a promissory note the defendant relied on the Statute of Limitations. After the time fixed by the statute had run, the defendant, in answer to a demand for payment by the plaintiff's solicitors, wrote admitting the debt and adding, "I have no means of any sort . . . if I could I should gladly pay."

Held, that this was a sufficient acknowledgment and unconditional promise to pay to take the case out of the operation of the statute.—*PARSON v. NESBITT, K.B.D.*, 89.

5. *When pleaded too late—Accounts—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8.*—On a summons for an account against trustees, section 8 of the Trustee Act, 1888, should be raised by way of defence when the order is being made, and it is too late to raise it after the accounts have been for some time before the master, or on the hearing of a further consideration.—*RE WILLIAMS, JONES v. WILLIAMS, Neville, J.*, 495; 1916, 2 Ch. 38.

See also Deed of Gift; Riot.

**LOCAL GOVERNMENT:—**

1. *Isolation hospital—Constitution of hospital committee—Representation of district authorities—Power of county council to alter representation—"Regulations"—Isolation Hospitals Act, 1893 (56 & 57 Vict. c. 68), ss. 9, 10, 18, 20—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 32 (3).*—The defendant county council in 1897 made an order creating a united district for the purpose of establishing a hospital under the Isolation Hospitals Acts, 1893 and 1901, and determining the representation on the committee of the council and the local authorities (including the relator plaintiff council) within the district. The committee, thus constituted, discharged their duties until 1914, when differences arose between them and the defendants on questions of policy, and the defendants, claiming to act under the powers conferred by section 32, sub-section 3, of the Interpretation Act, 1889, made a further order directing that, in lieu of the scheme of representation adopted in the order of 1897 (under which the relator plaintiffs had one representative and the defendants two), there should in future be a fresh scheme, under which the defendants' representatives should be increased to nine, which would give them such an absolute majority on the committee that they could entirely control its policy. The Court of Appeal, reversing *Sargant, J.*, held that, as a county council had power at any time, provided it directly contributed to the funds to be administered, to dissolve the existing committee, and create a new

one in its place, and to vary and reduce thereon the representation of the local authorities concerned and increase that of the county council, the order which the relator plaintiffs sought to have set aside was not *ultra vires*. The relator plaintiffs appealed.

The House, after taking time for consideration, dismissed the appeal.

Decision of Court of Appeal (Lord Cozens-Hardy, M.R., dissenting) (reported 60 SOLICITORS' JOURNAL, 74; 1916, 1 Ch. 177) affirmed.—ATTORNEY-GENERAL v. DERBYSHIRE COUNTY COUNCIL, H.L., 618; 1916, 2 A.C. 283.

2. *Premises unfit for habitation—Closing order—Service of order on lessee—Freeholder unknown—Service of order by leaving it with occupant of premises—Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 49—Housing, Town Planning Act, 1909 (9 Ed. 7, c. 44), s. 17, sub-section 3.*—Where a local authority, having decided that a building ought to be closed as being unfit for habitation, made all the usual inquiries, but was unable to discover the owner of the freehold, and served a copy of the closing order addressed to the owner of the premises by leaving it with a woman in occupation thereof,

Held, that such service was sufficient, and that personal service of the order was unnecessary.

Decision of Neville, J., affirmed.—ARLIDGE v. HAMPSTEAD BOROUGH COUNCIL, C.A., 43; 1916, 1 Ch. 59.

3. *Public health—Single private drain—Public sewer—Single pipe used for drainage of row of houses—Cul-de-sac—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 41—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 19—Kingston-upon-Hull Corporation Act, 1903 (3 Ed. 7, c. cxxvi.), s. 49.*—A single conduit pipe, running underneath a private road forming a *cul-de-sac*, and carrying off the surface drainage from two rows of houses, which backed on to the road, into a public sewer at the end of the road,

Held, to be a "single private drain" with which two or more houses or premises were connected and conveying their drainage into a public sewer, within the meaning of a local Act of Parliament, and not a "public sewer."

Decision of Sargant, J., affirmed (59 SOLICITORS' JOURNAL, 318; 1915, 1 Ch. 456).—KINGSTON-UPON-HULL CORPORATION v. NORTH EASTERN RAILWAY, C.A., 58; 1916, 1 Ch. 31.

#### MONEY-LENDER:—

1. *Registration—"Own or usual trade name"—Initials sufficient—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2 (1).*—In order to comply with section 2, sub-section 1 (a) of the Money-lenders Act, 1900, it is not necessary for a money-lender to register his Christian name in full; the use of initials is a sufficient and proper registration.—HART v. HUNGERFORD, K.B.D., 369.

2. *Reopening closed transaction—Excessive interest—Absence of fraud or pressure—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.*—The defendant, a lady possessed of considerable means, in 1914 approached the plaintiff, a registered money-lender, for a loan. The plaintiff lent her £70, and took a promissory note for £100, of which £20 was to be paid in a month and the balance of £80 at the end of a further month. The transaction was completed, and the money repaid. The lady then obtained another loan for the same amount, upon the same terms. She repaid the first instalment of £20, but did not repay the balance. In an action by the money-lender,

Held, that the defendant was entitled to relief on the ground that the transaction was harsh and unconscionable, but that she was not entitled to reopen the first transaction.

Per Pickford, L.J.: There is no rule (as would appear to have been laid down by his lordship in *Michaelson v. Nicholas* (1910, W. N. 69, 26 T. L. R. 327), and noted in the Annual Practice, 1914 edition, p. 164) that, where there has been no deception or pressure by the money-lender, the Court ought not to reopen a transaction which had been closed.—KERNAN v. WAINWRIGHT, C.A., 336.

#### MORTGAGE:—

*Licensed premises—Licensee's liabilities under covenant—Restrictions under Liquor Control Regulations—Reduction of profits—Defence of Realm (Liquor Control) Regulations, 1915, clause 13.*—The licensee of two licensed houses in London having covenanted with the plaintiffs to pay them interest on mortgages, and quarterly sums on account of principal, alleged that, since he executed the deed, the profits made in his licensed premises had been so reduced by the restriction of hours and prohibition of treating by the Liquor Control Regulations that he was unable to perform his covenants.

Held, that the word "impossible" in clause 13 of the Defence of the Realm (Liquor Control) Regulations, 1915, means something which cannot by any means be performed consistently with the Regulations, and that the defendant had not shewn that the

payment of the sums due under the deed was impossible in consequence of the Regulations.—MEUX'S BREWERY v. EAD, K.B.D., 682.

See also Company; Conflict of Laws; Emergency Law; Limitations, Statute of; Rating.

#### NATIONAL INSURANCE:—

*Panel doctor—Orders for drugs—Power to surcharge if extravagant—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 65—National Health Insurance (Medical Benefit) Regulations (England), 1913, Regulation 40.*—Regulation 40 of the National Health Insurance (Medical Benefit) Regulations (England), 1913, which provides that an Insurance Committee, if they are of opinion that, an excessive demand upon the drug fund has arisen owing to a doctor's prescriptions being extravagant, may deduct such amount as they think fit from the amount payable to him, is not *ultra vires*.—O'NEILL v. MIDDLESEX INSURANCE COMMITTEE, K.B.D., 529; 1916, 1 K. B. 331.

#### NATIONALITY:—

1. *Alien—Naturalized subject—Privy Councillor—Capacity for membership—Act of Settlement, 1700 (12 & 13 Wm. 3, c. 2), s. 3—Naturalization Act, 1844 (7 & 8 Vict. c. 66), ss. 2, 6—Naturalization Act, 1870 (33 & 34 Vict. c. 14), s. 7—British Nationality and Status of Aliens Act, 1914 (4 & 5 Geo. 5, c. 17), s. 3.*—The effect of section 3 of the British Nationality and Status of Aliens Act, 1914, is that the provision in section 3 of the Act of Settlement, 1700, rendering an alien born incapable of being a Privy Councillor, does not apply to an alien who has become a naturalized British subject.

Decision of the Divisional Court (1916, 1 K. B. 595) affirmed.—REX v. SPEYER, C.A., 707.

2. *Child born in England of German parents—Liability to military service—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 1, sub-section (1)—British Nationality and Status of Aliens Act, 1914 (4 & 5 Geo. 5, c. 17), s. 14, sub-section (1).*—A child of German parents who was born in, and is ordinarily resident in, England is liable for military service, although he is still an infant, and is therefore unable to make the declaration of alienage under the British Nationality and Status of Aliens Act, 1914, s. 14, sub-section (1).—SAWYER v. KROPP, K.B.D., 656.

#### NATURALIZATION:—

*Child of naturalized alien born abroad—Certificate of naturalization not obtained by widow—Child resident with widow in England—Naturalization Act, 1870 (33 Vict. c. 14), s. 10, sub-sections (1) and (5).*—One born abroad prior to the British Nationality and Status of Aliens Act, 1914, his father being an alien who before his child's birth had obtained a certificate of naturalization as a British subject, does not, by residence during infancy in England with his mother while she is a widow, obtain British nationality, unless she also has taken out a certificate of naturalization under section 10, sub-section (5), of the Naturalization Act, 1870.—JAFÉ v. KEEL, K.B.D., 586.

#### NEGLIGENCE:—

1. *Independent contractor—Contract to deliver beer—Work not necessarily causing interference with highway—Liability of employer.*—The defendant company employed a contractor to deliver beer at a public-house, of which the other defendant was the occupier. In order to deliver the beer a cellar flap, which was in a highway, was opened, and put back flat with the pavement and left unguarded. The plaintiff tripped over it in the dark, and fell into the cellar, sustaining personal injuries. In an action to recover damages for negligence judgment was given against both defendants. The defendant company appealed.

Held, that they were not liable, as they had only employed the contractor to deliver the beer, and had not specified the manner in which it was to be delivered. It was therefore not work which would necessarily interfere with the highway or cause danger to the public using the highway.—WILSON v. HODGSON'S KINGSTON BREWERY, K.B.D., 142.

2. *Statutory authority to perform dangerous work upon a highway—Absence of reasonable precautions—Nuisance—Intervention of third party—Effective cause of accident—Liability of original wrongdoer.*—The defendants, in discharge of their statutory right, were doing certain work upon a highway which necessitated the use of molten lead. The lead was placed in a fire pail, which was left unguarded on a piece of land adjoining the highway, where young children were playing. A boy who was passing accidentally upset the pail, and the lead injured the plaintiff.

Held, that the defendants were negligent in leaving the pail unguarded, and were creating a nuisance, which was the effective



cause of the injury to the plaintiff, and that the intervention of the third party did not relieve them from liability, because they ought reasonably to have anticipated it.—*CRANE v. SOUTH SUBURBAN GAS CO.*, *K.B.D.*, 222; 1916, 1 K. B. 33.

3. *Steam lorry left unattended on highway—Intervention of third person—Proximate cause of accident.*—The defendants' servants left a steam lorry unattended in a highway, having previously put it out of gear. In order to start the lorry it was necessary to remove a safety pin and to manipulate three levers. Two soldiers who were passing climbed on to the lorry and tried to start it. The first one failed, but the second one succeeded in starting it backwards, with the result that it ran into the plaintiff's shop. In an action to recover damages,

Held, that the defendants' servants were not negligent in leaving the lorry in this condition, and, even assuming that they were negligent, that negligence was not the proximate cause of the accident.—*RUOFF v. LONG & CO.*, *K.B.D.*, 323; 1916, 1 K. B. 148.

See also Highway.

#### PATENT:—

*Action for infringement—Right to take proceedings to restrain threats—“Patentee”—Exclusive licensee—Patents and Designs Act, 1907 (7 Ed. 7, c. 29), s. 36.*—A person claiming to be a licensee of a patent is not a “patentee” within the meaning of the Patents and Designs Act, 1907, s. 36, so as to be liable to an action at the instance of an aggrieved person to restrain such licensee from threatening legal proceedings or liability in respect of an alleged infringement of a patent.—*DIAMOND COAL CUTTING CO. v. MINING APPLIANCES CO.*, *C.A.*, 42.

#### POOR PERSON:—

See Divorce; Practice.

#### POOR RATE:—

See Rating.

#### POWER OF APPOINTMENT:—

*Appointment by will under power in settlement—Partial revocation by codicil—Invalid new appointment.*—Where it was clear that the intention of a testatrix in making a partial revocation by a codicil of an appointment made by her will was really for the purpose of giving her daughter extra security, but the new appointment was void for a perpetuity,

Held, that the revocation preceding the new appointment was of no effect, and that the earlier appointment by the will held good.—*RE BERNARD, Neville, J.*, 458.

#### PRACTICE:—

1. *Attachment—Solicitor—Notice of motion—Service—Substituted service.*—Where evidence was adduced on an *ex parte* motion to show that a solicitor was keeping out of the way in order to avoid personal service of a notice of motion for a writ of attachment to issue against him, the Court ordered that service of the notice of motion, by leaving during business hours a copy of the notice of motion, together with a copy of the order to be made on the *ex parte* application before the Court, and copies of the affidavits in support of the motion, at the solicitor's office should be deemed good service of the notice of motion on the solicitor.

*Mander v. Falcke* (1891, 3 Ch. 488) considered.—*RE A SOLICITOR, Sargant, J.*, 708.

2. *Chancery system of linked judges—Notice of motion—Non-appearance of defendant—Name of judge to whom motion assigned.*—A notice of motion which states that the Court will be moved before Mr. Justice A. is sufficient, although the Court is in fact moved before Mr. Justice B., the judge before whom, owing to the system of linked judges adopted in the Chancery Division, the motions in actions assigned to Mr. Justice A. are made, notwithstanding that the respondent to the motion does not appear; and an order can properly be made on such a motion by Mr. Justice B. in accordance with its terms.—*RE ROMNEY (LIMITED), Sargant J.*, 141.

3. *Discovery—Action for breach of contract—Settlement of action—Claim to recover from underwriters costs and expenses of compromise—Privileged documents.*—A newspaper company was sued for having published, in breach of a contract, certain photographs in their newspaper. That action was settled on the terms that the company should pay a certain sum for damages and costs. The company was insured under a Lloyd's policy against “damages, costs and expenses” which they might incur “in relation to the defence or compromise of any proceedings commenced against them in any court of law in respect of any matter published” in their newspaper during the currency of the policy.

The present action was brought against the underwriters to recover the sum paid to settle the previous action, together with a further sum of £65, costs and expenses they themselves had paid their solicitors in respect of getting up the defence prior to the date of compromise. To their affidavits of documents the company attached a schedule of documents which included documents relating to the original action, and among them were letters which had passed between the managing director and the editor and their solicitors, papers submitted to counsel, notes for a bill of costs and the bill of costs itself, and in respect of all these documents they claimed privilege. The master refused to make an order directing them to be produced, and that order was affirmed by Ridley, J.

Held, dismissing the defendants' appeal, that all these documents, including the bill of costs, were within the ordinary rule of privilege attaching to documents of a confidential and professional character; nor was there a rule, analogous to that recognized in the case of marine insurance, allowing, in the case of an insurance contract, wider discovery.—*DAILY EXPRESS v. MOUNTAIN, C.A.*, 654.

4. *Discovery—Documents disclosing communications between the defendants and their agents—Affairs of state—Privilege—Affidavit of documents—Sufficiency—Interests of public as opposed to that of private suitor—R.S.C., 1883, ord. 31, rr. 12, 13, 14.*—In an action to recover damages for alleged breach of contract by the defendants to supply a cargo of crude oil to be shipped at a Persian port, the defendants in their affidavit of documents objected to produce certain documents relating to communications between themselves and their agents, which they claimed were entitled to protection under order 31 as public official documents.

Upon an application by the plaintiffs for further discovery, Scrutton, J., made an order adjourning the application until the trial of action. The defendants appealed.

Held, dismissing the appeal, that the fact that the documents were confidential or official was of itself no reason for their non-production. The foundation of the rule in order 31 was that, if the information sought could not be disclosed without injury to the public interest, or the production of the documents would be injurious to the public service, the interest to the individual suitor must be subservient to that of the general public. In this case Scrutton, J., had exercised his discretion, and the Court saw no reason to overrule it.—*ASIATIC PETROLEUM CO. v. ANGLO-PERSIAN OIL CO.*, *C.A.*, 417; 1916, 1 K. B. 822.

5. *Discovery—Interrogatory—Libel—Intention of writer—Relevancy to issue—Admissibility.*—The plaintiffs, who owned and managed certain hotels in London, among them being the Viaduct Hotel, which was largely used by Lodges of Freemasons, sued the defendants, the proprietors, publishers and printers of a weekly publication entitled *John Bull*, in respect of a statement published therein which contained the following passage:—“Though there may be good and sufficient official reasons for suppressing the name of the hotel—which we know—and the men concerned in certain incidents on the last Zeppelin night, there are certainly no good and sufficient reasons why the Masonic craft should not protect themselves against being placed in a false position by the employment of Germhun waiters or managers in hotels where they hold their lodge meetings and other ‘functions.’ A lodge of British Masons ought to withdraw from any and every hotel where Germhun servants are employed.” The defendants denied that they had printed or published the words complained of with reference to the plaintiffs' management or conduct of the Holborn Viaduct Hotel. The plaintiffs obtained leave to administer the following interrogatory: Do not the words complained of in paragraph 3 of the statement of claim, or some and which of them, refer to the plaintiffs? On appeal by the defendants,

Held, that the interrogatory in its then form was not permissible following *Wilton v. Brignell* (1875, W. N. 239); but that the interrogatory might be put thus: “Is not the name of the hotel referred to, and which you say you know, the Holborn Viaduct Hotel?”—*SPIERS & POND v. JOHN BULL, C.A.*, 353.

6. *Inquiry in chambers—Presumption of death—Form of certificate.*—It is not for a master, on an inquiry before him whether an annuitant is living or dead, either to presume the death or to state that there is no evidence before him to shew whether the annuitant is living or dead. His certificate should take the form of finding that the only evidence on the point before him is the evidence mentioned in the certificate, and submitting to the Court the question whether the annuitant ought to be presumed to be living or dead, and, if dead, on what date the death ought to be presumed to have taken place.—*RE LONG, Sargant, J.*, 59.

7. *New trial—Inadequacy of damages—Repayment of damages and costs paid to plaintiff—Stay of proceedings until repayment.*—

Where a plaintiff has recovered damages in an action, and then, on appeal, obtains an order for a new trial on the ground that the damages awarded were inadequate, he must repay to the defendant any sum paid to him for damages and costs before proceeding to the new trial, and if he refuses to do so, the Court will order a stay of proceedings in the action until repayment is made.—*BITTERBANDT v. AUTO-VAN MAINTENANCE Co., C.A., 554.*

8. *Originating summons—Future rights—Declaration as to—R.S.C., ord. 25, r. 5, and ord. 54a.*—A declaration as to future rights should not, as a rule, be made where all the parties interested are not ascertained. The rule laid down by Jessel, M.R., in *Curtis v. Sheffield* (21 Ch. D. 1), is still generally applicable. Order 54a, only deals with procedure and does not enlarge the jurisdiction of the Court as defined by the *Guarantee Trust Co. of New York v. Hannay & Co.* (1915, 2 K. B. 536).—*RE STAPLES, Sargant, J., 321; 1916, 1 Ch. 322.*

9. *Parties—Beneficiaries against trustees—Trustees nominal defendants—R.S.C., ord. 16, rr. 11 and 12.*—An objection as to parties raised by a defendant—where other defendants who were trustees had the legal estate, and the claim was by beneficiaries under the trust to have a transaction, purporting to be a sale, declared to be a mortgage, with power in the trustees to redeem—that such defendant trustees ought to be co-plaintiffs with the beneficiaries, was successfully sustained at the trial, although not raised in the defence of the objecting defendant.

*Walters v. Green* (1899, 2 Ch. 696) and *Republic of Chili v. Rothschild* (1891, W. N. 138) held not applicable; also *R.S.C., ord. 16, rr. 11 and 12*, not applicable to such a case.—*FRANKLIN v. FRANKLIN, Neville, J., 43.*

10. *Parties—Representation order—R.S.C., ord. 16, r. 9.*—Ord. 16, r. 9, only authorizes the Court to make a representation order when the parties are numerous.

Five parties are not numerous enough unless the amount in question is very small, or unless the Court is satisfied that all the other parties wish the question to be determined in the presence of the one only.—*RE BRAYBROOK, Sargant J., 307.*

11. *Poor person—Action for tort—Remitted to county court—Jurisdiction—County Courts Act, 1888, ss. 65, 66—R.S.C., ord. 16, rr. 22-31.*—A plaintiff brought an action to recover damages for personal injuries, alleging that the injuries were caused her by the negligence of the defendants. She obtained an order admitting her to sue as a poor person, and as such issued her writ against the defendants. The defendants thereupon applied to have the action remitted to the county court. The master refused to make the order, but Ridley, J., allowed the application. The plaintiff appealed.

Held, that the discretion given to a Judge to direct that an action in tort commenced in the High Court should be remitted for trial to the county court was not affected or restricted by the fact that the plaintiff had been admitted to sue in the High Court as a poor person.—*PERRY v. LONDON GENERAL OMNIBUS Co., C.A., 566; 1916, 2 K. B. 335.*

12. *Postponement of trial—Rights of parties not affected—War work—Jurisdiction—R.S.C., ord. 36, r. 34.*—A dispute between riparian owners, which was commenced in 1909, was ordered to stand over till after the declaration of peace on the application of the defendants alleging war work, and admitting a taking of water in excess of their rights as riparian owners, and undertaking not to make any alteration in their works till the trial of the action.—*CARDIFF CORPORATION v. BARRY RAILWAY, Neville, J., 354.*

13. *Service out of jurisdiction—Service of concurrent writ on defendants domiciled in Scotland—"Necessary or proper party"—Acceptance of service of writ by other defendants also domiciled in Scotland—Action not "properly brought" as against them—R.S.C., ord. 11, r. 1 (g).*—By ord. 11, r. 1, service out of the jurisdiction of a writ of summons may be allowed by the Court or a Judge whenever, "(g) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction." The plaintiffs commenced an action by concurrent writs against two sets of defendants both domiciled in Scotland. One set of defendants raised no objection to the jurisdiction, and accepted service of the writ, but the other refused to accept service. The plaintiffs thereupon applied for and obtained leave *ex parte* from the Court of Appeal to serve these defendants with a concurrent writ under rule 11. On being served with the writ, the defendants moved to have the service set aside, and the Court of Appeal granted the application, on the ground that the action was not properly brought within the meaning of the rule.

Held, that the decision of the Court of Appeal was right. The action could not be said to be properly brought within the meaning of the rule against the first-named defendants, since it could only

be maintained because of their voluntary undertaking to appear.—*JOHN RUSSELL & Co. v. CATZER, IRVINE, & Co., H.L., 640; 1916, 2 A. C. 298.*

14. *Summons or petition—Life assurance—Deposit in court—Application for payment of dividends—Life Assurance Companies Act, 1909 (9 Ed. 7, c. 49).*—An application for payment of dividends on the deposit paid into court, under the Life Assurance Companies Act, 1909, and the Board of Trade Order, 1910, rr. 2-4, may be made by summons under ord. 55, r. 2 (3), of the Rules of the Supreme Court, 1883, and need not be made by petition.

*Re Royal Exchange Assurance Co.* (1910, W. N. 211) not followed.—*RE NEW YORK LIFE ASSURANCE Co., Sargant, J., 106.*

15. *Transfer of action—Chancery Division—Administration—Action to recover possession under a lease, and damages for breach of covenant—Claim against defendant as executor and also personally—R.S.C., ord. 18, r. 5; ord. 49, r. 5.*—In 1915 the plaintiff issued a writ against the defendant as executor of J. N. P., and as assignee of a term of years granted to J. N. P., claiming recovery of certain premises in London and damages for breach of covenant. In 1911 a writ had been issued by a creditor for the administration of the estate of J. N. P. In July, 1915, an order was made to revive that action, and in January, 1916, judgment was given in that action for the administration of the estate of J. N. P. In March, 1916, Neville, J., ordered that the plaintiff's action, which had been assigned to Eve, J., should be transferred to himself. Thereupon the defendant applied, by summons, that all further proceedings in the action should be stayed, and Neville, J., stayed the action so far as it sought to enforce a claim against the defendant as executor. The plaintiff appealed.

Held, that Neville, J., had jurisdiction to make the order.—*RE PIMM, C.A., 527.*

See also Appeal.

#### PRINCIPAL AND AGENT:—

*Mis-statements by agent—Measure of damages.*—The defendants, as agents of the plaintiff, obtained a music-hall engagement for her, in which she was to be paid on sharing terms, but they negligently misrepresented to her the takings of the hall. In an action for damages by her,

Held, that the proper measure of damages was the amount she was actually out of pocket by reason of her accepting the engagement, and also damages for loss of time based on the average value of her time to her, but not any damages the ascertainment of which involved any speculation as to what she might have earned had the representations been true.—*JOHNSTON v. BRAHAM AND CAMPBELL, K.B.D., 681.*

#### PRINCIPAL AND SURETY:—

*Bond for performance of contract—Dispute between parties referred to arbitration—Contractor ordered to pay the costs—Liability of surety.*—The plaintiffs employed a contractor to carry out certain works, and the defendants, as sureties for the contractor, gave a bond for the due performance by him of the terms of the contract. Disputes arose, which were referred to arbitration, and the arbitrator gave judgment for the plaintiffs, and ordered the contractor to pay the costs. The contract did not contain any provision that the contractor would pay the plaintiffs the costs of any proceedings that might take place between him and the plaintiffs if he was unsuccessful and was ordered to pay them. The plaintiffs sued the defendants on their bond for the amount of the judgment and the costs.

Held, that as the liability of the contractor to pay the costs was the result of the arbitration, and was not due to any promise contained in the contract, the defendants were not liable.—*HOOLE URBAN COUNCIL v. FIDELITY AND DEPOSIT Co., K.B.D., 429; 1916, 1 K. B. 25.*

#### PRIZE LAW:—

1. *British vessel carrying cargo to enemy port—Deviation by order of Admiralty—Inconvenience or delay attributable to a state of war—Extra cost of discharge.*—The rule, that, where a voyage of a British vessel carrying cargo to an enemy port has been diverted to an English port after the announcement of hostilities, by order of the Admiralty, no sum is allowed to the shipowners in respect of any inconvenience or delay attributable to the state of war or to the consequent detention or seizure of the ship, extends to include extra cost of discharge occasioned by such Admiralty order.

The judgment in *The Juno* (59 SOLICITORS' JOURNAL, 251) extended and explained.—*"THE TREDEGAR HALL," P.D., 45.*



2. *Cargo—Enemy owners—Alleged ownership by partners—One alien enemy partner—Failure of British partners to sever connection—Condemnation.*—Though an alleged profit pooling among certain firms may constitute a partnership consisting of three British partners and one alien enemy partner, the goods being the property of the four partners, nevertheless, as the three British partners had not taken steps to sever their connection with the enemy partner upon the outbreak of war, their shares in the goods must suffer condemnation.—“THE MANNINGTRY,” *P.D.*, 75.

3. *Cargo of oil for Germany—Discharge into tanks at English wharf—Seizure during discharge.*—A cargo of oil belonging to a German company was shipped at Texas on board an English vessel for delivery at Hamburg. On the voyage war was declared and her owners directed her captain to discharge at an English port. The vessel accordingly proceeded to Purfleet and began discharging her cargo of oil by means of pumps into tanks on shore connected with the pumps by pipes. While so discharging her cargo the whole of her cargo was seized as prize. The President held that the whole of the cargo of oil was lawful maritime prize. The claimants appealed.

Held, the decision of the President was right, and the appeal was dismissed accordingly.—“THE ROUMANIAN,” *P.C.*, 58; 1916, 1 A. C. 124.

4. *Conditional contraband—Continuous voyage—Ultimate hostile destination—Evidence.*—The doctrine of continuous voyage has become part of the law of nations. In applying the principles of International Law the English Prize Court is not restricted in its vision to looking at the primary consignment of goods to neutral ports, but is entitled, and bound, to take a more extended outlook in order to ascertain whether the neutral destination is merely ostensible; and, if so, what the real ultimate destination is.

*The William* (1806, 5 C. Rob. 385) applied.

In deciding whether the ultimate destination of the cargoes was for the use of the enemy Government or its naval or military forces all the circumstances, both of the enemy country and of the country of ostensible destination, must be taken into account.

*The Bermuda* (3 Wall. 514) applied.—“THE KIM,” *P.D.*, 9; 1915, P. 215.

5. *Enemy owner with neutral domicile—Change of domicile before seizure—Condemnation.*—Copper belonging to a German subject carrying on trade in Brazil was shipped from that country to Liverpool and seized as prize. The German had left Chile before the seizure, and the evidence appeared to shew that he had been in Switzerland not long after it.

Held, that although the country to which the German subject appeared to have betaken himself was, equally with Chile, a neutral country, yet he had by leaving Chile lost his neutral trade domicile, which he had acquired by residence in Chile, and had thereby revested himself with his original character as an enemy, and the goods were accordingly liable to condemnation.—“THE FLAMENCO” v. “THE ORDUNA,” *P.D.*, 107.

6. *Firms carrying on business in China—Registration at the respective Consulates—Status of.*—A firm, consisting of two English and two German partners, which is registered in the German Consulate as a German firm at Shanghai, which is a treaty port where the various merchants of different countries are governed by the law of their own country in their commercial business carried on in that locality, is to be treated in all matters relating to the jurisdiction of a Prize Court in time of war as if it were established in Germany itself.

*The Indian Chief* (3 C. Rob. 12) not applicable.—“THE EUMÆUS,” *P.D.*, 122.

7. *Freight—Expenses of diversion of voyage—Agents of enemy owners—Right of agents on condemnation to recover freight paid.*—Where a cargo has been seized by the Crown as prize, on the ground of alien enemy ownership, the English agents, whom the Court found paid the freight in order to preserve the goods for the owners, whom they knew to be enemies, were held to have no right to demand repayment of the amount paid by the Crown out of the proceeds of the cargo.—“THE BILBSTER,” *P.D.*, 107.

8. *Goods of enemy firm shipped before outbreak of war—Neutral partner's share.*—Where a neutral partner did nothing actively after the outbreak of hostilities to further the delivery of goods to the enemy house, it was held that he had not lost his right to have his share of the property protected from confiscation, and restitution was made to him of his share before the rest of the goods were condemned.—“THE ANGLO-MEXICAN,” *P.D.*, 418.

9. *International Law—Use of Suez Canal port by enemy ship as port of refuge—Status of Port Said—Hague Convention VI. (1907), Arts. 1 and 2.*—A German ship arrived at Port Said on 5th August, 1914, in ignorance that hostilities had broken out between Great Britain and Germany. From 5th August to 14th August she was

not free to leave. On 14th August she was informed that she could proceed if she liked. She never asked for a pass. She was not offered one. Matters so remained until 13th October, when the Egyptian Government put a crew on board, and three days later took the ship out to sea and handed her over to one of H.M. cruisers, who seized her as prize and took her to Alexandria. At that time war had not been declared between Great Britain and Turkey, and Egypt had not been declared a British Protectorate. The Egyptian Prize Court held that the circumstances under which the ship was seized authorized her detention only. The Crown appealed.

Held, that the proper order to make in such circumstances was one similar to that made in the case of *The Chile* (1914, P. 217), leaving the ultimate rights of the parties to be determined after the war.—“THE GUTENFELS,” *P.C.*, 477; 1916, 2 A. C. 112.

10. *Jurisdiction of Prize Court—Cargo—Rights of pledgees—Bounty of Crown—Civil List Act, 1910 (10 Ed. 7 and 1 Geo. 5, c. 28).*—Cargoes of nitrate of soda were sold by neutrals abroad to a German firm, and were shipped at Valparaiso before the outbreak of the war in *The Odessa*, a German ship, and in *The Woolston*, an English ship. The appellants, London bankers, who were British subjects, accepted bills of lading in favour of the sellers against these cargoes, and were liable for large sums which they had paid or were liable to pay under the bills. *The Odessa* was captured at sea, and *The Woolston* was seized at Liverpool, to which port she had been ordered by the appellants, who claimed both the cargoes.

Held, affirming the decision of the President (Sir S. Evans), that the rights of pledgees of enemy cargo were not regarded in the Prize Court, as enemy ownership was the sole criterion of the liability to condemnation; but that the Crown's prerogative power of bounty to redress hardships in neutrals and subjects still existed, and had not been impaired by the Civil List Acts passed at the commencement of each reign from that of 1 Geo. 4, c. 1, which affected droits of the Admiralty and droits of the Crown.

Decision of Evans, P. (reported 59 SOLICITORS' JOURNAL, 189; 1915, P. 52), affirmed.

Decision of the Committee in the case of *The Roumanian* (reported ante, p. 58) applied in the case of the cargo condemned on board the British ship *Woolston*.—“THE ODESSA” AND “THE WOOLSTON,” *P.C.*, 292; 1916, 1 A. C. 145.

11. *Neutral ship captured by the enemy—Subsequently detained in attendance on enemy ship—Recapture and release by British ship—Claim for salvage.*—The general rule that no salvage is due for recapture of neutral vessels, upon the principle that the liberation of a bona fide neutral from the hands of the enemy is no beneficial service to the neutral, was held not to apply in the case of the capture of a Greek ship by the Germans, on the ground that the Germans had sullied their character by a gross violation of the law of nations.

It was held, where the notorious German ship *The Emden* had captured the Greek ship *The Pontoporos* on 10th September, carrying contraband of war (coal) to a British port, and detained her in attendance upon her till 12th October, with threats to sink her if her crew did not work in accordance with the orders of the German prize crew, and a British ship had recaptured *The Pontoporos*, that upon the strictest legal grounds, and also upon every ground of equitable dealing, the restitution to the Greek owners upon recapture should have been upon payment by them of reasonable salvage, which the Court fixed at one-sixth of the value of the vessel.

The judgment of Lord Stowell in *The Sanson* (6 C. Rob., at p. 413) applied.—“THE PONTOPOROS,” *P.D.*, 430; 1916, P. 100.

12. *Neutral vessel—Intention to supply enemy with coal—False papers—Voyage abandoned—Capture on return—Restitution—Costs.*—A ship belonging to a Dutch subject, loaded with Welsh coal purchased by him, and ostensibly consigned to a firm in Buenos Ayres, to whom the vessel purported to be chartered, and carrying on board a person first described as “steward,” and later as “passenger,” who left the ship when she put into Tenerife for bunker coals, was unable to buy bunker coals there. The master, who had become suspicious that her cargo of coal was destined to a German warship, received at Tenerife a cable from the owner that the charter was cancelled, and ordering him to sell the coal. He thereupon sold the coal, and left for Madeira for orders, and was ordered by naval officers to go to Gibraltar for investigation. Being allowed to leave Gibraltar, he loaded a cargo of sulphur at Huelva for Rotterdam, but had to put into Falmouth for repairs, where the ship was seized as prize.

Held, first, that this ship did not come within any of the categories specified in Article 46 of the Declaration of London, as adopted by the orders of the Privy Council (1) as taking a direct part in hostilities; (2) as under the orders of an agent on board of an enemy country; or (3) as being in the exclusive employment

of the enemy Government. Secondly, that she was a neutral ship carrying contraband, and her goods would have been capturable *in delicto*, and also the ship, if her owner was implicated in veiling the transaction with false papers or deceitful devices. Thirdly, that in this case the ship and the cargo would have been confiscable on the home journey if the coal cargo had been delivered to the enemy; but here it had not been so delivered, and the ship was accordingly immune from capture and must be restored. The owner was ordered, by reason of his conduct, to pay the costs.—“THE ALWINA,” *P.D.*, 540; 1916, P. 131.

13. *Order in Council of 11th March, 1915*—“*Reprials*” Order—*Validity*—*Compensation to neutrals*—*Freight*.—There is no right in the Prize Court to grant compensation to neutrals for delay and inconvenience caused to them in carrying out the Order in Council of 11th March, 1915, for stopping German trade, provided that no further delay or inconvenience is caused than is inevitable; but no aggrieved party is precluded from contending that the means employed to carry out the Order were unlawful, as entailing on neutrals a degree of inconvenience which was unreasonable considering all the circumstances of the case. The inconvenience must be suffered by the neutrals if it is the effect of the exercise of legitimate belligerent rights.—“THE STIGSTAD,” *P.D.*, 496; 1916, P. 123.

14. *Outbreak of hostilities*—*Enemy vessels seized in port*—*Hague Convention VI.* (1907), Arts. 1 and 2—*Condemnation*.—Where a German vessel bound for Hamburg, learning off Scilly of the outbreak of war between France and Germany, put into an English port on 4th August, and was first told by the Customs authorities that she must not leave the port, but afterwards received the permission of the Commander-in-Chief to leave, but did not in fact leave owing, as the learned Judge found as a fact, to fear of capture by a French cruiser, and was arrested on the morning of 5th August, war having been declared at 11 p.m. on 4th August between England and Germany,

Held, she must be condemned as prize of war.

Articles 1 and 2 of the Hague Convention VI. do not apply to give protection from confiscation to merchant ships which have put into port to avoid capture.—“THE PRINTZ ADALBERT,” *P.D.*, 480; 1916, P. 81.

15. *Outbreak of war*—*Days of grace*—*Hague Convention VI.* (1907)—*Application to enemy yacht*—*Not a vessel of commerce*.—The Sixth Hague Convention of 1907 extends only to vessels engaged in commerce, and consequently does not apply to protect an enemy-owned yacht.—“THE GERMANIA,” *P.D.*, 76; 1916, P. 5.

16. *Outbreak of war*—*Vessels seized “at sea” or “in port”*—*Hague Convention VI.* (1907), Articles 1 and 2—*Capture*—*Entering port to escape capture*.—Held, on the facts, that the German steamship *Belgia* was captured at sea and not in port on the outbreak of hostilities between Great Britain and Germany, and was not, therefore, protected from confiscation by Arts. 1 and 2 of the Sixth Hague Convention.

Decision of Evans, P. (50 SOLICITORS’ JOURNAL, 561), affirmed.—“THE BELGIA,” *P.C.*, 457.

17. *Seizure of cargo*—*Right of Crown to requisition before condemnation*—*Order in Council*—*Validity*—*Prize Court Rules*—*Order 29*.—A Swedish ship with a cargo of grain and copper ore, belonging to a Swedish trading company, was proceeding from New York to Stockholm, when, on 8th April, 1915, she was taken into a British port by one of H.M. cruisers, and placed in the custody of the Marshal of the Prize Court. It was admitted, on the one hand, that copper was absolute contraband of war, and, on the other, that the vessel was ostensibly bound for a neutral port. On 14th May, 1915, a writ was issued by H.M. Procurator-General, claiming confiscation of both vessel and cargo, and on 14th June, 1915, the President, at the instance of the Procurator-General, made an order under ord. 29, r. 1, of the Prize Court Rules, giving leave to the War Department to requisition the copper, subject to an undertaking in accordance with the provisions of ord. 29, r. 5.

On appeal by the claimants,

Held, that there was no evidence before the President on which he could properly make the order appealed from until there had been proceedings to try the right of the Crown to requisition the cargo and detain or confiscate the ship. As the copper had been used no order for restitution could be made, and there must therefore be a declaration that the order appealed from was wrong, and leave to the appellants, in the event of their ultimately succeeding in the proceedings for condemnation, to apply to the Court below for such damages, if any, as they might have suffered by reason of the order and what had been done under it. Appeal allowed.

Decision of Prize Court (50 SOLICITORS’ JOURNAL, 614; 1916, P. 27) varied.—“THE ZAMORA,” *P.C.*, 416; 1916, 2 A. C. 77.

18. *Trading with the enemy*—*Neutral vessel*—*Shippers a French company*—*Cargo originally destined for Germany*—*Liability to capture and confiscation of property of Allies alleged to have been trading with the enemy*—*Obligations as to trading binding confederate States*.—On the outbreak of war, in which a belligerent has allies, the citizens of all the allied States are under the same obligations to each allied State as its own subjects would be to a single belligerent State with relation to intercourse with the enemy.

Prior to the outbreak of war between Great Britain and her Allies and Germany a French company contracted to sell silver lead to a Frankfurt firm. The lead was shipped from a neutral State on board a neutral vessel. War broke out while the ship was being loaded, but she afterwards sailed, her destination being Antwerp and Newcastle. By wireless the vessel was ordered by the French firm to proceed to Swansea, where the goods were seized and sold. It was admitted that at the time of the seizure the property in the lead was still in the French company.

Held, that though the French company had acted *bona fide*, what they had done constituted a trading with the enemy, and their goods were confiscable under the above principle of international law.—“THE PANARIELLOS,” *P.C.*, 427.

19. *Turkish cargo*—*Stored in bonded warehouse at British port of discharge*—*Subsequent outbreak of war with Turkey*—*Seized as droits of Admiralty*—*Validity of such seizure*.—Where a Turkish cargo had been discharged at a British port, and stored in a bonded warehouse at that port, and war had subsequently broken out between Great Britain and Turkey,

Held, that such goods were properly subject to seizure as maritime prize and droits of Admiralty, and must be condemned.

The *Romanian* (1916, A. C. 124) applied.—“THE EDEN HALL,” *P.D.*, 418; 1916, P. 76.

#### PROBATE:—

1. *Administration with the will annexed*—*Domiciled Irishman*—*Irish grant*—*Application for grant in England*—*Probates and Letters of Administration Act (Ireland), 1857* (20 & 21 Vict. c. 79) s. 95.—The provision of section 95 of the Probates and Letters of Administration Act (Ireland), 1857 (20 & 21 Vict. c. 79), that probates and letters of administration granted in Ireland, shall, on being resealed, be of like force as if originally granted in England, does not prevent the English court from granting probate or letters of administration in respect of the estate in England of a domiciled Irishman, in cases where the Irish grant has not, in fact, been resealed.—IN THE ESTATE OF MILLAR, *P.D.*, 210.

2. *Soldier's will*—*Informal will of army nurse written in England while under orders to embark for duty*—“*Actual military service*”—*Wills Act, 1837* (1 Vict. c. 26), s. 11.—An army nurse is a “soldier” within the meaning of section 11 of the Wills Act, 1837, and her informal will, if made by her while in actual military service, is entitled to probate.

An army nurse who had been employed on hospital ships, while in London on short leave, received orders to embark on a hospital ship. Three days after the receipt of such orders, and two days before embarking, she wrote out in London a letter containing her testamentary dispositions.

Held, that the letter was entitled to probate as the will of a soldier.—IN THE GOODS OF STANLEY, *P.D.*, 604.

3. *Soldier's will in form of letter*—*Exclusion from the probate of passages dealing with military operations*—*Wills Act, 1837* (1 Vict. c. 26), s. 11.—Where a letter, written by a soldier when on actual military service, contained, in addition to passages of a testamentary character, descriptions of military operations to the inclusion of which in the probate the military authorities objected, the Court, in granting probate of the dispositive passages, directed that the remainder of the letter should not be included in the probate.—IN THE GOODS OF HEYWOOD, *P.D.*, 239; 1916, P. 47.

4. *Will of mariner or seaman “at sea”*—*Member of Auxiliary Royal Naval Sick Berth Reserve*—*Letter written before joining vessel after receipt of mobilization order*—*Wills Act, 1837* (1 Vict. c. 26), s. 11.—The will of a seaman not made at sea is not brought within the purview of section 11 of the Wills Act, 1837, by circumstances which, had the maker been a soldier, and had the services on which he was engaged been military instead of naval, might have led the Court to consider that he was “in actual military service” within the meaning of the section.

A member of the Auxiliary Royal Naval Sick Berth Reserve, mobilized shortly before the outbreak of war, was ordered to proceed to Chatham Barracks, where he remained for several days before joining the hospital ship *Rohilla*, in which he afterwards



perished at sea. After receiving his orders, but before he left home for Chatham, he wrote out and signed an unattested document of a testamentary character.

Held, that the document was not entitled to probate as the will of a "mariner or seaman being at sea" within the provisions of the Wills Act, 1837.—*IN THE GOODS OF ANDERSON, P.D.*, 254; 1916, P. 49.

#### PROHIBITION:—

*Certiorari—Order by competent military authority—Jurisdiction—Defence of the Realm (Consolidation) Regulations, 1914, Reg. 14.*—An order was made by a competent military authority, purporting to act under Regulation No. 14 of the Defence of the Realm (Consolidation) Regulations, 1914, that a naturalized German should not reside in or enter certain areas. On application for writs of prohibition and *certiorari* to the competent military authority.

Held, refusing the writs, that he had jurisdiction to make the order, as he had exercised his judgment "honestly," and that it was not necessary for him to shew that he had acted "reasonably."—*REX v. DENISON, K.B.D.*, 527.

#### PUBLIC AUTHORITIES PROTECTION:—

*Costs—Public authority—Solicitor and client costs—Action dismissed for want of prosecution—"Judgment" or order—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (b)—R.S.C., ord. 36, r. 12.*—An order dismissing an action for want of prosecution under ord. 36, r. 12, is a "judgment" within the meaning of head (b) of section 1 of the Public Authorities Protection Act, 1893, entitling the defendant council to costs as between solicitor and client.—*GILBERT v. GOSPORT AND ALVERSTOKE DISTRICT COUNCIL, Sargant, J.*, 695.

See also Costs; Limitations, Statutes of.

#### PUBLIC HEALTH:—

*Pail closet—Notice to substitute water closet—Failure by owner of premises to execute work—Work done in default by local authority—Expense of "such work"—Damage to owner's premises—Exemption from liability to pay—Rawtenstall Corporation Act, 1907 (7 Ed. 7, c. lxviii.), s. 257.*—The plaintiff, who was the owner of certain premises in a terrace, was served with a notice to convert his pail closet on the premises into a water closet, and connect the same with a sewer. The notice not having been complied with, the corporation, as the local sanitary authority, did the work. In carrying out the work they constructed a joint sewer to carry away the sewage from other buildings as well as that of the plaintiff. The cost having been apportioned, the plaintiff refused to pay his share on the ground that his premises had been injuriously affected by subsidence, and he claimed compensation. The matter was referred to an arbitrator, who awarded the plaintiff damages. The defendants denied liability, relying on their local Act, section 257 of which provided, in effect, that where the local authority executed work in default of the owner or other person required to do the work, the corporation "shall not as between themselves and such other person, in the absence of any negligence on the part of the corporation, be liable to pay any damages consequent upon the doing of such work."

Held, that as the work which had been done, and which caused the subsidence, was more than the work which by the notice the plaintiff was required to do, the plaintiff was not in "default" within the meaning of section 257. The damage, therefore, did not result from "such work," and the defendants could not claim the exemption contained in the section, and were liable under the award.—*PLACE v. RAWTENSTALL CORPORATION, C.A.*, 690.

See also Local Government; Rating.

#### RAILWAY:—

*1. Demurrage—Transfer of goods to fresh consignee—Privilege of contract—Advice note—New contract—Time for unloading—Railway Rates and Charges, No. 10 (Lancashire and Yorkshire Railway, &c.), Order Confirmation Act, 1892 (55 & 56 Vict. c. xlviii.), Schedule, s. 5.*—Two wagon loads of goods consigned to M. arrived at the plaintiffs' station on a Friday. M. instructed the plaintiffs to transfer the goods to the defendant. On the same day the plaintiffs sent the defendant an advice note, informing him that demurrage would be charged if the goods were not unloaded within two days and removed within forty-eight hours of despatch of the notice, and that he was to send not later than 6 o'clock p.m., and on Saturdays not later than 1 o'clock p.m. The defendant did not complete unloading until the Tuesday morning. The plaintiffs claimed demurrage.

Held, that as the defendant had received and acted on the advice note, a contract was created between him and the plaintiffs, and that, as the terms of the advice note shewed that Saturday

was to count as a full day, the defendant had not removed the goods within the time stipulated, and was liable for demurrage.—*LANCASHIRE AND YORKSHIRE RAILWAY v. SWANN, K.B.D.*, 496; 1916, 1 K. B. 263.

*2. Gates and posts maintained at station approach under statutory authority—Darkening of streets order—Taxicab collides with posts—Action for damages—Alleged breach of duty to take reasonable precautions to render approach safe—Defence of the Realm Consolidation Act, 1914 (5 Geo. 5, c. 51), s. 1—Regulations made thereunder.*—By a private Act of Parliament a railway company were empowered to maintain certain posts and gates which led into their station-yard, and which had been erected by them in the highway, and to renew and replace the same in the same site and position. The Act was silent as to any duty of lighting the highway, and, in fact, the site was lighted by the local authority. By virtue of the regulations made under the Defence of the Realm Consolidation Act, 1914, the lighting of the approach had been considerably reduced. The plaintiff, in response to a call, was driving his taxi-cab into the station-yard upon a dark night, and failed to see the posts, and collided with them. In an action by H., claiming damages for injuries thus sustained, the jury awarded him damages, and the Court of Appeal, dismissing the appeal by the company, held that, as the company were bound to use the powers vested in them reasonably, there was a duty cast upon them to take precautions for the safety of the public, and if by a reasonable exercise of their powers—as, for example, by painting the posts white or placing lanterns on them—they could have prevented the happening of the accident, it was open to the jury to find they had been negligent, and had committed a breach of their duty to H., as a member of the public.

Held, that there was no duty on the company to illuminate the posts and that they were entitled to judgment.—*GREAT CENTRAL RAILWAY v. HEWLETT, H.L.*, 678.

See also Highway.

#### RATING:—

*1. City of London—Land reclaimed from the River Thames—Exemption from taxes and assessments—General rate—Consolidated rate—Police rate—Statute of 1767 (7 Geo. 3, c. 37), s. 51.*—The appellants were occupiers of premises built on land within the area reclaimed from the River Thames, and exempted from "all taxes and assessments whatsoever" by section 51 of the Act of 7 Geo. 3, c. 37. They were rated to the general rate levied by the respondents, and, on a case stated, the Court of Appeal held that, as the rates in question were substantially new rates since the Statute of 1767 was passed, the exemption from liability did not apply and the appellants were liable to pay.

Held (Lord Sumner dissenting on the ground only that these were new taxes to which the exemption did not apply), that the words in section 51 of the Act of 1767, "free from all taxes and assessments whatsoever," applied to all local taxes whether old or new, and that the appellants were therefore not liable to pay the rate in question.

Held, further, by all their lordships, that the words "or otherwise" in section 169 of the City of London Sewers Act, 1848, did not impliedly repeal the exemption, and that that question was concluded by *London Corporation v. Netherlands Steamboat Co.* (1906, A. C. 263).

Decision of the Court of Appeal (59 SOLICITORS' JOURNAL, 545; 1915, 3 K. B. 128) reversed.

*Sion College v. London Corporation* (1901, 1 K. B. 617) overruled.—*ASSOCIATED NEWSPAPERS v. LONDON CORPORATION, H.L.*, 694.

*2. Graving docks—Partial exemption—"Land covered with water"—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (b).*—Held, that the graving docks in question, which had direct access through gates to adjoining wet docks, of which they formed a part and were used for examination and repair of ships below the water-line, which were floated into them, and when repaired were floated out again, were not "land covered with water," and were therefore assessable at their full net annual value, but that the entrances were "land covered with water," and were assessable at one quarter of such value.

Decision of Scrutton, J. (1915, 2 K. B. 312, 13 L. G. R. 764, 84 L. J. K. B. 1207), affirmed.—*MERSEY DOCKS AND HARBOUR BOARD v. BIRKENHEAD CORPORATION, C.A.*, 321; 1916, 1 K. B. 695.

*3. Mortgage of premises and fixtures on the premises—Poor Rate Assessment and Collection Act, 1869, s. 16—Public Health Act, 1875, s. 211 (3)—Companies (Consolidation) Act, 1908, s. 107.*—A mortgage was by conveyance of premises and assignment of the fixtures and movables then or thereafter to be placed upon the premises and of the goodwill of the business carried on there. A receiver had been

appointed in a foreclosure action and the tenants ordered to attorn to him.

Held, that there had not been a change of possession within section 16 of the Poor Rate Assessment and Collection Act, 1869, and section 211 of the Public Health Act, 1875.

Held, also, that such a mortgage was a floating charge bringing the case within *Tailby v. The Official Receiver* (13 A. C. 523).—*NATIONAL PROVINCIAL BANK v. UNITED ELECTRIC THEATRES, Astbury, J.*, 274; 1916, 1 Ch. 132.

4. *Poor rate—Waterworks—Indirectly productive works—Assessment of "intake"—Special adaptability—Enhanced value beyond structural value and its value as land—Rate of interest on land purchased and cost of buildings—Credit of public body enabling them to borrow below usual rate.*—The appellants, the Metropolitan Water Board, under their statutory powers, received at their pumping station on the banks of the Thames, within the respondents' district, water which flowed from the river over land occupied by them called an "intake." The respondents assessed the intake works to the relief of the poor, calculating their rateable value by the rule of thumb usually followed—namely, 4 per cent. on purchase price of the land and 5 per cent. on the cost of buildings. In addition, they claimed that there should be added an additional assessment on the ground of the land's enhanced value to the appellants by reason of its fitness for the purpose for which they acquired it. The Quarter Sessions accepted the Water Board's contention that no additional assessment based on fitness of user could be added to the assessment made on the basis mentioned, but they rejected the Board's contention that, being in a position to borrow at 3½ per cent., the land and the buildings should be assessed in their case at this lower rate of interest, instead of at 4 per cent. and 5 per cent. respectively. The Court of Appeal affirmed the order of the Divisional Court, which remitted the case back, with an intimation that the special fitness of the land might be considered in arriving at the rateable value of the "intake," but on the question of the 4 per cent. and 5 per cent. basis both Courts affirmed the decision of the Court of Quarter Sessions. The Water Board appealed.

Held, allowing the appeal on the first point only, that the decision of Quarter Sessions was right on both points, and must be affirmed.—*METROPOLITAN WATER BOARD v. CHERTSEY UNION, H.L.*, 208.

5. *River Thames—Lands vested in Conservators—Poor and general district rates—Exemption—Application for distress warrant—Jurisdiction of justices to hear and determine defences.*—*Thames Conservancy Act, 1894* (57 & 58 Vict. c. cxxxvii.), s. 289.—By section 289 of the Thames Conservancy Act, 1894, all lands, buildings, &c., vested in the Conservators in respect of the Thames above London Bridge "shall be exempt from all parochial charges, rates, taxes, assessments, impositions, and payments whatsoever."

A house and grounds abutting on the towpath of the River Thames were vested in the Conservators for the purposes of the Act, and they had held the same and received rent therefor since 1857.

The Conservators recently let the house to one Clark, and he occupied it as a residence. He was summoned for refusing to pay the poor rate and the general district rate in respect of his occupation. The justices decided that they had jurisdiction to deal with the summons, and held that the person sought to be rated to the poor rate and to the general rate was exempted from liability to either, by reason of the section of the Act of 1894 referred to above. The justices, however, stated a case.

The Court of Appeal, after consideration, held that the justices had jurisdiction, and that the premises sought to be rated were within the excepting section, and were exempt from the general rate, as well as from the poor rate, as to which latter rate alone the Divisional Court held the exemption applied.

Decision of Divisional Court (reported 1915, 1 K. B. 548, 84 L. J. K. B. 825), on the question of the general rate, reversed.—*WHENMAN v. CLARK, C.A.*, 174; 1916, 1 K. B. 94.

#### RECEIVER :—

1. *Practice—Debenture-holders' action—Security by the receiver.*—In future, wherever a receiver, or receiver and manager, is appointed by any Judge of the Chancery Division, and ordered to give security within a specified time, the appointment is to be drawn in such a form that the receivership, or receivership and managership, is to lapse unless the security is given within that time, or unless in the meantime an extension of time is obtained from the Judge in chambers.

The practice adopted by Neville, J., in *Rowley v. Desborough* (60 SOLICITORS' JOURNAL, 429), to be applied in all the Courts of the Chancery Division.—*RE SIMS & WOODS, Sargant, J.*, 539.

2. *Practice—Security.*—The order appointing a receiver and manager, or receiver or manager, with liberty to act at once, should

be drawn up in the Chancery Division in such form that, if security is not given within twenty-one days thereafter, the appointment will automatically lapse.—*ROWLEY v. DESBOROUGH, Neville, J.*, 429.

#### RESTRAINT ON TRADE :—

1. *Public policy—Assignment of salary—Agreement restricting freedom of employment and mode of life.*—A clerk, in consideration of money lent, assigned to the lender all salary due or to become due in any employment, together with all overtime and extras. He further agreed not to do anything which might cause him to be dismissed or have his salary reduced, and not to terminate any employment without the lender's written consent; also not to borrow or raise any money nor part with his household furniture, nor obtain or endeavour to obtain credit or buy goods on the system of deferred payments. Further, that he would not permit anybody to pledge his credit, except his wife in respect of ordinary tradesmen's books for weekly settlement, of which the lender might have inspection, nor make himself or his property either legally or morally liable on behalf of another for any money. And he agreed not to remove from his present residence unless with the lender's written consent.

Held, that the agreement so unduly fettered the disposal of the debtor's labour and restricted him in his mode of life and in earning his livelihood and means of subsistence that it was void as being against public policy, and wider than necessary for the lender's protection.

Held, also, that it was one indivisible contract.—*HORWOOD v. MILLAR'S TIMBER AND TRADING CO., K.B.D.*, 641.

2. *Restraint for seven years over United Kingdom—Deprivation of benefit of skill and experience acquired in employment—Reasonableness of restraint in interest of the parties.*—An engineer who had been ten years in the employ of a firm with a large business, involving the manufacture of a special kind of machinery, entered at their request into a service agreement containing a covenant restraining him from carrying on, or being concerned or assisting in any capacity in, the manufacture or sale of machinery of this class by any firm carrying on such business in the United Kingdom for a period of seven years from the date that he ceased to be in their employ.

Held, that an employer had no property in the general skill and knowledge of the servant acquired in his service. There was a distinction between a restrictive covenant to protect the rights of the purchaser of the goodwill of a business, who takes a covenant in restraint of trade from his vendors for the purpose of preventing competition, and so depreciating the value of the goodwill purchased from them, and a covenant the effect of which was merely to prevent the servant placing his personal skill and knowledge at the disposal of a rival firm. The covenant in question was of the latter class, and was unreasonable, and, therefore, unenforceable, as being wider than necessary for the master's protection.

Order of the Court of Appeal (Phillimore, L.J., dissenting) (reported 59 SOLICITORS' JOURNAL, 412; 1915, 2 Ch. 57) affirmed. Decision in *Mason v. Provident Clothing & Supply Co.* (57 SOLICITORS' JOURNAL, 739; 1913, A. C. 724) followed.—*HERBERT MORRIS & CO. v. SAKELBY, H.L.*, 305; 1916, 1 A. C. 688.

#### REVENUE :—

1. *Death duties—Exemption of works of art from duty until sale—Enjoyment in kind—Bequest of chattels free of duty—Finance Act, 1896, s. 20—Finance Act, 1910, s. 63.*—A testator bequeathed works of art of great value to a legatee "free of legacy duty." The legatee never took possession of them, but, on the executor's assent to the legacy being given, caused them to be delivered to a purchaser to whom she had contracted to sell them.

Held, that under the Finance Acts, legacy and other death duties became payable upon the sale of the chattels, but that the legatee took them free, not only of any legacy duty which might have been payable upon the testator's death, but also of such legacy duty as became payable on the sale, and therefore that such duty must be borne by the residuary estate.—*RE SCOTT, SCOTT v. SCOTT, C.A.*, 478; 1916, 2 Ch. 268.

2. *Estate duty—Legacy duty—Incidence of duties—Legacy Duty Act, 1796* (36 Geo. 3, c. 52), s. 12—*Finance Act, 1914* (4 & 5 Geo. 5, c. 10), s. 14.—A sum of stock was bequeathed "subject to any duty thereon," and the testator directed that every bequest, as well specific as pecuniary, thereinbefore made should, "except where otherwise expressly stated, be free and clear of duties." There was also a direction to pay testamentary expenses out of the residuary estate.

Held, that the legatee took the legacy of stock subject to legacy duty, but not subject to any part of the estate duty payable on the testatrix's death.



*Re Morrison, Morrison v. Morrison* (1900, 102 L. T. 530), applied.

Where the testatrix gave the income of another stock to A for life, and after her death the stock to be sold, and the proceeds of sale, "subject to any duty affecting the same," to be divided between two named charities.

Held, that as the legacy duty was payable at one and the same rate by the persons entitled in succession under section 12 of the Legacy Duty Act, 1796, no legacy duty, or any part of the estate duty payable on the death of the testatrix, was payable by the charities, but that the estate duty payable under section 14 of the Finance Act, 1914, on the death of the life tenant must be borne equally by the charities.

*Re Turnbull, Skipper v. Wade* (1905, 1 Ch. 726) and *Re Snape* (1915, 2 Ch. 179) applied.

Where there was no direction about duty, but a corporation annuity was given to the trustees to pay to the annuitant and at her death to sell, and hand the proceeds of sale to a charity.

Held, that the estate duty payable on the death of the annuitant must be paid out of the testatrix's estate.—*RE BROWN, TURNBULL v. ROYAL, &c., Younger, J.*, 353.

3. *Estate duty—Settlement—Trust for sale—Conversion—General power of appointment over proceeds—Exercise of power by will—Reconversion—Determination of trust for sale—Property which does not pass to the executor as such*—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9 (1).—By a marriage settlement land was conveyed to trustees upon trust for sale, and to hold the proceeds upon trust for such persons as the settlor should by deed or will appoint. The settlor exercised her power by her will, appointing the property, the bulk of which still remained unsold, to trustees on trust for sale, but not during her husband's life without his consent, and to pay the income to him for life, with remainders over.

Held (Lord Parmoor dissenting), that the property did not pass to the executors as such within the Finance Act, 1894, s. 9 (1), and was liable to bear the estate duty, but was liable to bear it as personality.

*Per Lord Buckmaster, C.*—Section 9, sub-section 1, of the Finance Act, 1894, deals with the actual transition of an estate, and the words "as such" are equivalent either to the phrase "*qua executor*" or "*virtute officii*," and in neither of these capacities does personal property subject to an exercised power by will pass to the executor, if it passes at all.

Decision of the Court of Appeal (59 SOLICITORS' JOURNAL, 332; 1915, 1 Ch. 613) reversed, and decision of Eve, J. (1915, 1 Ch. 39), restored with a variation.

*Re Hadley* (1909, 1 Ch. 20) overruled.—*O'GRADY v. WILMOT, H.L.*, 456; 1916, 2 A. C. 231.

4. *Income tax—Incidence—Deduction from annual payment—Permanent maintenance—Charge on income of settled property—Share of annual net income after income tax paid—Share not to fall below a fixed minimum—Validity of agreement—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 102, 103.*—A wife in receipt of a large income settled upon her by will, and paid to her by the trustees after deduction of income tax thereon, was divorced by her husband, and was ordered by the court to provide permanent maintenance for him and her infant daughter. A deed was executed by the parties whereby she charged her net annual income with payment of one-quarter thereof to her husband, but if one-quarter should fall below £2,500, then the clear sum of £2,500 (without deduction of income tax). One-quarter of the net income having fallen below £2,500,

Held (affirming Neville, J.), that the income being net income after deduction of tax, the agreement to pay the clear sum of £2,500 was valid, notwithstanding the provisions of the Income Tax Act, 1842, and that the wife was not entitled to the repayment of the income tax on the £2,500.

*Blount v. Blount* (1916, 1 K. B. 230) distinguished.—*BROOKE v. PRICE, C.A.*, 618.

5. *Income tax—Person chargeable—Infant—Profits from business—No trustee or guardian—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 100, 173—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 92.*—A person earning profits from any trade, business or employment is assessable to and chargeable with income tax thereon, although he may be an infant, and there are no trustees, guardians or other persons who have the direction, management or control of his property.

Decision of Divisional Court reversed.—*REX v. INCOME TAX COMMISSIONERS FOR NEWMARKET, C.A.*, 336; 1916, 1 K. B. 788.

6. *Land values—Valuation—Increment value duty—Unworked minerals reserved to owner—Form IV.—Return made by owners as to land—Omission to specify in return—Nature of minerals and estimate of their capital value—Right of owner to make separate*

*return as to minerals—Finance (1909-10) Act, 1910 (10 Ed. 7, c. 8), ss. 2 (3), 23 (2), 26 (1).*—The owners of a farm let on lease for a term of years with a reservation to the owners of the minerals (the same not being comprised in any mining lease or being worked) received a notice from the Commissioners of Inland Revenue requiring them to make a return on a form (Form IV.) for the purposes of land valuation. The owners duly filled up Part I. of the form, but omitted to fill up the space in Part II. headed "Additional particulars, which may be given if desired" for the estimate of the capital value of unworked minerals. The form did not purport to treat the minerals as a separate parcel for valuation purposes, and a note thereon stated that, unless the owners described and set a value on the minerals, their value would be treated as nil on 30th April, 1909. The minerals having been sold, the Crown claimed increment value duty on the sale.

The Court of Appeal, reversing the decision of Warrington, J., held that the minerals being in different occupation to the land, and not having been treated as a separate parcel, the form requiring the return was invalid; that the return made was not a return within section 23 (2) of the Act, and did not bind the owners; and further, that the owners were entitled to make a proper return on a proper notice and have a substituted capital value fixed in respect of the minerals. The Crown appealed.

Held, after consideration, that the decision of the Court of Appeal (reported 59 SOLICITORS' JOURNAL, 349; 1915, 1 Ch. 703) was right. The appeal was wholly without merits, and (the Crown consenting) the respondents were to have their costs there and in the Court below.

*Dyson v. Attorney-General* (1912, 1 Ch. 158) approved.—*ATTORNEY-GENERAL v. FORAN, H.L.*, 385.

7. *Licence duty—Increase of—Free house—Part of increase recoverable from grantor—Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 2—Finance Act, 1910 (10 Ed. 7, c. 8), s. 46.*—The meaning of the words "the grantor of the lease" in the Finance Act, 1912, s. 2, by which such grantor, in certain events, is rendered liable to pay a proportion of any increase of duty on licensed premises imposed by the Finance (1909-10) Act, 1910, must be strictly construed, and refers only to the person who actually executes the lease of the land for the term to be vested in the lessee, whatever be the nature of his beneficial interest therein (if any).

Decision of Astbury, J. (59 SOLICITORS' JOURNAL, 651), reversed.—*BODEGA CO. v. MARTIN, C.A.*, 10; 1915, 2 Ch. 385.

8. *Undeveloped land duty—Development by erection of buildings—Land unbuilt on—Time required to recoup expenditure—Finance (1909-10) Act, 1910 (10 Ed. 7, c. 8), s. 16, sub-section (2).*—Of certain land, consisting of about 93 acres, 49 acres were developed by the erection of buildings for brickworks, which had cost £36,000, so as to be free from undeveloped land duty. Other 44 acres were necessary as a reserve of brickearth for the successful working of the undertaking, there being without them on the developed land enough to carry on the work for only five years; thirty years, however, being necessary for the proper return of the capital expended on the buildings.

Held, that these 44 acres were not developed by the erection of the buildings, and that expenditure with a view to land being used in future so as to recoup such expenditure is not a development or user of the land in itself.—*FERGUSON v. INLAND REVENUE COMMISSIONERS, K.B.D.*, 708.

See also Will.

## RIOT:—

*Claim for compensation—Statute of Limitations—Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38), ss. 2, 3, 4—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.*—An action to recover compensation under the Riot (Damages) Act, 1886, is not an action in respect of any neglect or default in the execution of any "Act, duty or authority" within the meaning of section 1 of the Public Authorities Protection Act, 1893. The provision, therefore, contained in that section—that such an action must be brought within six months—does not apply.—*KAUFMAN v. LIVERPOOL CORPORATION, K.B.D.*, 446; 1916, 1 K. B. 860.

## SALE OF GOODS:—

1. *Action for price—Mistake as to the true buyers—Judgment against stranger to contract—Subsequent action against party thereto—Whether judgment recoverable—Practice—Interlocutory and final orders—Distinction—R.S.C., ord. 58, r. 15.*—An order of a Divisional Court, setting aside a non-suit of the plaintiff in an action tried in the City of London Court, and ordering a new trial, is an interlocutory and not a final order.

In an action for the price of goods, the sellers by error obtained judgment against a defendant who was not the buyer. The seller thereupon commenced an action against the real buyer, claiming

that he was entitled to do so, since the original judgment, although still upon the record, was unsatisfied.

A Divisional Court held that the seller was not barred in proceedings against the real buyer, and ordered a new trial.

On appeal by the defendant to the Court of Appeal, the decision of the court below was upheld.

Decision of the Divisional Court (*ante*, p. 338) affirmed.—ISAACS & SON v. SALBSTEIN, C.A., 444.

2. *Arbitration clause—Jurisdiction of arbitrators to entertain and decide as to existence of custom affecting rights and liabilities under contract.*—In connection with the sale of goods a dispute had arisen between the parties as to whether a certain tender was a good tender or not. The question was referred to arbitration, and a special case stated for the opinion of the High Court. The High Court having answered the question in the negative, the matter went back to the Committee of Appeal, and they made an award, in which they stated that, while they "unreservedly accepted the said answers upon the construction of the contract as a matter of law apart from the custom of the trade," they nevertheless found that there was a long-established and well-recognized custom of the trade by which, in the circumstances of this contract, there was an appropriation of the cargo to the buyers. On a motion to the court by the buyers to set the award aside.

Held, that the finding that there was a custom which in the circumstances of the case regulated the rights of the parties was a finding within the jurisdiction of the arbitrators.

Decision of Court of Appeal (1915, 1 K. B. 233) reversed.

*Hutchison v. Eaton* (13 Q. B. D. 861) and *Re Arbitration, North Western Rubber Co. and Huttenbach & Co.* (1908, 2 K. B. 907), disapproved.—PRODUCE BROKERS CO. v. OLYMPIA OIL AND CAKE CO., H.L., 74; 1916, 1 A. C. 314.

3. *C.I.F. contract—Bill of lading—Payment on delivery of shipping documents—War risk—Shipment on German steamer—Subsequent outbreak of war—Vessel takes refuge in neutral port—Bill of lading invalidated—Buyers entitled to refuse payment.*—Two c.i.f. contracts were entered into for the sale of beans to be shipped from Chinese to European ports, insurance to cover war risks, and payment to be made in cash on tender of the shipping documents not later than a certain date. The goods were shipped on German ships, covered in one case by a German policy of insurance, shortly before the outbreak of war. After war had been declared both vessels sought refuge from capture in a neutral port.

Held (affirming *Scrutton, J.*), that the event which had occurred to prevent delivery was not a war risk imposed on the buyer, and that the bills of lading and policy, being invalidated by war, were no longer effective, and that the buyers therefore were entitled to refuse payment.

The principles of c.i.f. contracts examined.—ARNHOLD, KARBURG, & CO. v. BLYTHE & CO., C.A., 156; 1916, 1 K. B. 495.

4. *On approval—Right of rejection.*—The plaintiffs, at the request of the defendants, supplied a machine for making brushes, on the terms that the defendants, if they rejected the machine within twenty-one days, were to pay the carriage both ways, and to pay for the machine, together with the carriage, if they retained it. Within twenty-one days from the date that the machine was dispatched, the defendants wrote rejecting it, on the ground that, although it was satisfactory, they anticipated trouble with their hands in working it. The plaintiffs thereupon sued for the purchase price.

Held, that the contract entitled the defendants to reject the machine for reasons other than defects in the machine itself, and the plaintiffs were not entitled to recover.

Decision of Divisional Court (31 T. L. R. 157) affirmed.—BERRY & CO. v. STAR BRUSH CO., C.A., 11.

#### SEPARATION DEED:—

*Fraud and concealment—Action by wife for damages—Rescission of deed—Declaration.*—A married woman, though proving that she was induced by the fraud and concealment of her husband to execute a deed of separation, cannot sue the husband in tort for damages, but she is entitled to have the deed rescinded or alternatively to obtain a declaration in lieu of rescission.—HULTON v. HULTON, K.B.D., 695.

See also *Divorce*.

#### SETTLED LAND:—

1. *Annuity—Person with powers of a tenant for life—Accumulation of rents to make a road—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-section 7; s. 58, sub-section 1 (6)—Annuity to be paid without deductions—Income tax not deducted—Mistake of law—Trustees' right to recoup themselves.*—A testator gave certain lands to his four grandsons as tenants in common for life, with cross

remainders between them, and to sink into residue after the death of the survivor. Subsequently, by a codicil, he directed his trustees to demise the lands, and accumulate the rents for ten years for a specific purpose. If this was not carried into effect the accumulations were to sink into residue.

Held, that the tenants for life had a present interest, "subject to a trust for accumulation of income for payment of debts or other purpose," and that, as there was no reason for limiting the generality of the words "or other purpose," the grandsons were accordingly tenants for life under section 58 (1) (6) of the Settled Land Act, 1882, and were entitled to exercise all the powers of the Act.

*Re Strangways* (1885, 34 Ch. D. 423) distinguished.

Where annuities are given by a will to be paid without deductions, the trustees are not justified in paying such annuities without deducting income tax. Trustees have, by the universal practice of the courts, a right to recoup themselves for such payments made by honest mistake out of future payments of annuities, and the cases as to not being able to recover money paid by mistake of law do not apply. That rule only applies to a mistake of public law.—*RE MUSGRAVE, Neville, J.*, 694.

2. *Direction to allow children to occupy house while unmarried—Person deemed to be tenant for life—Settled Land Act, 1882, ss. 2 (5), 58 (1).*—Where a testator provided that a certain property should be held upon trust to permit such one or more of his children who should be unmarried to use and enjoy such property so long as they or any of them should remain unmarried and should desire to reside there,

Held, that the two surviving unmarried children so residing were to be deemed to be the tenant for life within the meaning of the Settled Land Acts, so as to give them power to sell.—*RE BOYER'S SETTLED ESTATES, Sargant, J.*, 680.

See also *Settlement*.

#### SETTLEMENT:—

1. *Absolute gift—Proviso against absolute vesting—Subsequent trusts not exhaustive—Failure thereof—Absolute gift remains.*—Where there is an absolute gift, followed by a proviso against absolute vesting and for retention of the funds by the trustees, and the subsequent trusts do not exhaust the absolute interest, but there is a failure of those trusts,

Held, that the proviso only has the effect of cutting down the absolute interests to the extent to which it was necessary to give effect to the trusts and no further, and that the absolute gift accordingly remains.

*Hancock v. Watson* (1902, A. C. 14) applied.—*RE COHEN, Joyce, J.*, 239.

2. *Construction—Estate for life by implication—What is an implication of law?—A general proposition that there cannot be in a deed an estate by implication of law cannot be supported.*

*Tunstall v. Trappes* (1830, 3 Sim. 286) is a decision to the contrary.

*Query*, whether an estate arising by implication from the particular language used in a deed is an estate arising by implication of law.—*RE STANLEY'S SETTLEMENT, Sargant, J.*, 478; 1916, 2 Ch. 50.

3. *Marriage settlement by infant—Reversionary interest—Repudiation—Reasonable time for exercise of right.*—An infant who has executed a settlement may repudiate it after he comes of age, provided the right to do so is exercised within a reasonably short time. The fact that the property is reversionary makes no difference to the rule, and the settlor is not entitled to wait until it has fallen into possession before acting.

*Edwards v. Carter* (1893, A. C. 350) and *Carter v. Silber* (1892, 2 Ch. 278) applied.

*Re Jones, Farrington v. Forrester* (1892, 2 Ch. 461), overruled.—*CARNELL v. HARRISON, C.A.*, 290; 1916, 1 Ch. 328.

4. *Real estate—Power of sale and re-investment in land—Sales by tenant for life—Disentailing assurance—Land and money arising from sale of land—Resettlement—Moneys to be held "as capital moneys arising under the Settled Land Acts, 1882 to 1890"—Personality or realty—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 22.*—Real estates were strictly settled by a will with the usual powers of sale or exchange, and a direction for sale moneys to be reinvested in lands. Upon the property being disentailed and resettled, £15,000 sale moneys were directed to be held by the trustees of the will "as capital money arising under the Settled Land Acts, 1882 to 1890," from the premises thereby settled.

Held (1), that the disentailing assurance had put an end to the limitations and trusts of the settled estates created by the will. (2) That the direction to hold the £15,000 as capital moneys arising under the Settled Land Acts was not sufficient to impress them with the character of land, there being no imperative duty on the trustees to reinvest in land. (3) That the fund, when



it vested in the tenant-in-tail in remainder, belonged to him absolutely, and on his death passed to his next of kin.—*RE ASPINALL'S SETTLED ESTATES*, *Neville, J.*, 239; 1916, 1 Ch. 15.

5. *Tenant for life and remainderman—New lease at increased rent—Settled Land Act, 1882*, ss. 6, 7, 8, 13.—Unless a lease by a tenant for life under the Settled Land Act is so improper that it amounts to an unlawful exercise of his powers under the Acts, it is quite in accord with the spirit of the Acts that the Legislature intended that the tenant for life should keep for himself everything which under the terms of the instrument he had succeeded in retaining for himself.—*RE WIX, Younger, J.*, 291; 1916, 1 Ch. 279.

See also Bankruptcy.

# SHIPPING:—

1. *Charter of tank steamer—Period of five years—Requisition of ship by British Government—Alteration for use as a transport—"Restraint of princes" excepted—Charter party not invalidated.*—A tank steamer, constructed for carrying oil in bulk which had been chartered for a period of five years, more than half of which was unexpired, was requisitioned by the Government and converted into and used as a transport at a rate of hire which enabled the charterers to make a profit.

Held, that the commercial enterprise involved in the chartering of the vessel had not been frustrated, that what had happened was within an exception of "restraint of princes, rulers and people" contained in the charter party, and therefore that the charter was still a subsisting contract.—*TAMPLIN S.S. Co. v. ANGLO-MEXICAN, & Co., C.A.*, 209; 1916, 1 K. B. 485.

2. *Collision—Division of loss—Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1).*—At the trial of an action for damages by collision the judge found that both vessels were to blame, but that one was much more to blame than the other, and under section 1 (1) of the Maritime Conventions Act, 1911, he apportioned the liability at four-fifths and one-fifth. The Court of Appeal, being of opinion that there was no evidence on which the blame could be with any certainty apportioned, directed that the liability should be apportioned equally.

Held, after consideration, that the decision of the Court of Appeal was right.—*"THE PETER BENOIT," H.L.*, 88.

3. *Salvage—Assistance rendered to "requisitioned" ship—Action in rem commenced by owners, master and crew of tug—Motion by Crown that all proceedings against salvaged vessel be stayed so long as she remained in service of Crown—Costs.*—On a motion, set down by the Lords Commissioners of the Admiralty, asking that the writ and all subsequent proceedings in a salvage action should be set aside so long as the salvaged ship remained in the service of the Crown, on the ground that, the action being an action *in rem*, there was a risk of the vessel being seized in the event of judgment being given for the plaintiffs, and so delayed in the carrying out of her public duties as a requisitioned ship,

Held, allowing the motion, that a requisitioned ship was in the same position as a man-of-war and immune from liability to seizure.

Decision of *Bargrave Deane, J.* (reported *Times*, 15th January, 1916), reversed.—*"THE BROADMAYNE," C.A.*, 367; 1916, P. 64.

4. *Salvage—Ship requisitioned by Admiralty—Claim for salvage—Consent of Admiralty—Merchant Shipping Act, 1894, s. 557.*—In the case of a ship which has been requisitioned by the Admiralty, such ship is not in the position of a King's ship by reason merely of the fact that the Admiralty insured her against war risks and paid her owners for the right exclusively to employ her, and therefore proof of the consent of the Admiralty is not a condition before a claim for salvage services can be prosecuted by her owners, master and crew.—*OWNERS OF "THE SIMLA" v. OWNERS OF "THE SARPEN," C.A.*, 538.

5. *Seamen—Wages—Detention of ship in enemy port on outbreak of war—Internment of seamen—Hague Convention, 1907, No. VI., Arts. 1 and 2—Inability of crew to perform any services contracted for in the articles—Cessation of owner's liability for wages—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 134, 158.*—Held, that where a British ship is in an enemy port on the outbreak of war, and is detained and her crew interned, the liability of the owner of the ship to pay wages to the crew ends, since the internment of the crew, *ipso facto*, renders it impossible for them to perform any services contracted for under the articles.

Decision of Court of Appeal (*Phillimore, L.J.*, dissenting) (59 SOLICITORS' JOURNAL, 716; 1915, 3 K. B. 203) reversed.—*HORLOCK v. BEAL, H.L.*, 236; 1916, 1 A. C. 486.

6. *Vessel mined—Admiralty warning—Admitted negligence of master in not avoiding minefield—Passenger's claim—Condition printed on face of ticket—Right of shipowners to rely on condition*

relieving them from liability.—The plaintiff was a passenger on board a vessel belonging to the defendants sailing from Hull to Archangel. Her master failed to keep the route prescribed by the Admiralty for vessels crossing the North Sea, in consequence of which the steamship struck a mine and foundered. The defendants admitted the negligence of the master, but relied upon a condition printed on the face of the ticket given to the plaintiff, which provided that the defendants were not to be responsible either for loss of property, or loss of life, or personal injury, caused to a passenger by any act, neglect, or default of any servant of the company. At the trial the jury awarded the plaintiff £700 damages, and judgment was entered accordingly.

Held, that the plaintiff must be taken to have known of the condition on the policy, and that the defendants were thereby relieved from liability. Judgment was accordingly entered for the defendants.—*COOKE v. WILSON & Co., C.A.*, 121.

7. *War—Charter-party—Marine insurance—"War risk for charterers' account"—Neutral vessel sunk by enemy—Owner's duty to insure at cost of charterers.*—A time charter-party provided that the shipowners were to pay and provide for the insurance, and the following special clause was added in writing, "War risk, if any required, for charterers' account. . . . Value for war risk at all times to be based on values stated in owners' annual policy." Six weeks after the outbreak of the war the ship, which belonged to Dutch owners, was stopped and sunk by a German cruiser. In an action against the charterers, for damages for failure to insure,

Held (reversing *Bailhache, J.*), that the cost only and not the duty of insuring the ship against war risks fell on the charterers; but, even if they had been bound to insure, it was a condition precedent to their doing so that they should be informed of the insurable value by the owners, and this information had not been given them.—*HOLLAND GULF, & Co. v. WATSON & Co., C.A.*, 175.

See also Prize Law.

# SLANDER:—

*Imputation of immorality on schoolmaster—Words not spoken of him in his vocation—Not actionable without proof of special damage.*—A defamatory statement spoken of a man engaged in any office, profession, or business, imputing to him adultery, unchastity, or the like, is not actionable without proof of special damage, unless the words spoken relate to his conduct or duties in such office, profession, or business. The imputation of immorality to a beneficed clergyman, or one holding some office or employment of profit, is the only exception to this rule.

*Ayre v. Cravin (2 A. & E. 2) and Alexander v. Jenkins (1892, 2 Q. B. 797) applied.*—*JONES v. JONES, C.A.*, 140; 1916, 1 K. B. 351.

# SOLICITOR:—

See Costs; Practice.

# SPECIFIC PERFORMANCE:—

1. *Agreement for lease—Yearly rental of more than £26—Premium—Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, ss. 1 (2), 2 (2).*—A ninety-nine years' lease creates a tenancy within section 1 (2) of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and therefore a sale by the landlord of the right to have the lease, though highly beneficial to the purchasers, creates a "premium or other like sum in addition to the rent," and is unlawful.

When possession had not been taken under the contracts to purchase, the purchasers were not entitled to have the leases granted to them free from the payment of the purchase moneys. The landlord was held entitled to be relieved from the contracts upon repayment by him of all moneys which he had received thereunder.—*REES v. MARQUIS OF BUTE, Younger, J.*, 528.

2. *Motion for judgment by vendor—Conveyance—Stamping—Increment value duty—Minutes—Finance (1909-10) Act, 1910 (10 Ed. 7, c. 8), s. 4, sub-section 3.*—The minutes of judgment in a vendor's action for specific performance should contain a reference to the fact that the conveyance has been duly stamped with the increment value duty stamp in accordance with section 4, sub-section 3, of the Finance (1909-10) Act, 1910. The form at p. 2171 of the 7th edition of Seton on Judgments and Orders should be amplified by adding after the words "duly executed by him" the words "and duly stamped so as to comply with section 4, sub-section 3, of the Finance (1909-10) Act, 1910."—*DAWNAY v. CHESSUM, Sargant, J.*, 59.

# STOCK EXCHANGE:—

*Settlement—Purchase of shares for particular settlement—Failure of client to take up shares—Right of stockbroker to re-sell without leave of the court—Courts (Emergency Powers) Act, 1914*

(4 & 5 Geo. 5, c. 78), s. 1, sub-section 1 (b).—The plaintiff, a broker on the London Stock Exchange, purchased in July, 1914, on the instruction of the defendant, certain shares from a firm of jobbers. On the settling day the defendant failed to take up the shares, and the plaintiff re-sold them in the market, and brought an action claiming to recover the difference in the price.

Held, that the broker did not enter into possession to enforce payment of money, but in the ordinary course of business; and that he was in the position of mortgagee in possession, and could re-sell the shares without previously obtaining the direction of the Court.

Decision of the Court of Appeal (1916, 1 K. B. 632) affirmed.—*FOSTER v. BARNARD, H.L.*, 477.

#### THEATRE:—

*Contract—Seat in theatre—Accident to one of the audience—Pistol fired off on stage—Liability of lessee.*—The plaintiff took a ticket to see a performance of a play "In Time of War," at a theatre of which the defendant was lessee and manager. During the performance pistols with blank cartridges were fired off on the stage. For some unexplained reason one of the cartridges fired was small enough to pass into the barrel of the pistol, and, acting as a bullet, hit the plaintiff in the arm. In the county court she recovered £50 as damages. The defendant appealed to a Divisional Court. The judges, being divided in opinion, the appeal was dismissed, and leave to appeal given.

Held, that the liability of the defendant to the plaintiff was that of an invitor to an invitee, and, as the county court judge had not directed his attention to ascertaining whether reasonable care had been taken by the defendant to protect persons who had paid to see the play from any unusual risk of danger, there must be a new trial.

Decision of Divisional Court (31 T. L. R. 399) reversed.—*Cox v. COULSON, C.A.*, 402.

#### TRADE-MARK:—

1. *Name written backwards—"Gnidroc"—Invented word—Combination of letters—"Calculated to deceive"*—*Trade-Marks Act, 1905* (5 Ed. 7, c. 15), ss. 3, 9, 11.—Held, that the applicants were not entitled to register "Gnidroc" as a trade-mark, since in the circumstances it was calculated to deceive within section 11 of the Trade-Marks Act, 1905.

In the opinion of their lordships, neither party had an exclusive right to the word "Cording" as a trade-mark, but if the suggestion made by the applicants, and not opposed by the respondents, that the letter "G" should be omitted from the mark (which was simply the word "Cording" spelt backwards), were accepted, and the charge of fraud against the appellants withdrawn, then in this particular case the word could remain on the register, which would be rectified in accordance with the agreement between the parties.

Decision of Court of Appeal (reported 60 SOLICITORS' JOURNAL, 352; 1916, 1 Ch. 422) affirmed.—*RE GEORGE CORDING (LIMITED), H.L.*, 352.

2. *"Passing-off"—Sale of proprietary article under descriptive title—Description scientifically inaccurate—"Malted milk"—Sale of rival article under similar name—No monopoly in descriptive words.*—A firm had for many years advertised and sold a food preparation under the name of "Horlick's Malted Milk," and had recently commenced to manufacture it in England. During this time no other "malted milk" was on the market, and there was evidence that it was often asked for and supplied without the plaintiff's name being mentioned. The defendant having advertised a somewhat similar preparation under the name "Hedley's Malted Milk,"

Held, in a passing-off action, that the expression "malted milk" was not a fancy name distinctive of the plaintiff's goods, but was sufficiently accurate to be descriptive, and therefore *publici juris*.—*HORLICK'S MALTED MILK v. SUMMERSKILL, C.A.*, 320.

3. *Registration—Letters spelt out into word—"Ogee"—Not distinguishable from O.G.—Registrar's discretion—Trade-Marks Act, 1905* (5 Ed. 7, c. 15), ss. 9 (4), 12.—A firm, the initial letters of whose name were O.G., applied to register the word "Ogee" in certain classes, as a mark under the Trade-Marks Act, 1905, s. 9 (4). They had used the word, and also the letters O.G., for the purpose of marking their goods for many years, and had registered the word in certain classes before 1905. The registrar held that the word was simply the letters O.G. spelt out, and refused the application.

Held (reversing Sargant, J.), that the registrar had a discretion to accept or refuse such an application, and had rightly exercised it, and not misdirected himself.—*RE GARRETT'S TRADE MARK, C.A.*, 401; 1916, 1 Ch. 436.

#### TRADE UNION:—

*Objects—Shares in labour newspaper—"Investment" of funds ultra vires—Personal liability of executive.*—Where political objects do not form part of the constitution of a trade union, it is illegal and *ultra vires* the powers of the trustee of the union to invest its funds in a company formed to run a political newspaper.

*Bennett v. National Amalgamated Society of Operative House and Ship Painters and Decorators* (1915, W. N. 73) applied.

When, on the face of such a transaction, it appears that the application of the funds of the society was really never intended to be an investment, but a contribution to assist a particular object, the moneys so used have been misapplied, and not invested, and must be refunded.—*CARTER v. UNITED SOCIETY OF BOILER-MAKERS, &c., Younger, J.*, 44.

#### TRADING WITH THE ENEMY:—

1. *Partnership—Enemy partners—Dissolution—Trading with the Enemy Act, 1914* (4 & 5 Geo. 5, c. 87), ss. 1 and 2.—There were three partners in a large business, all naturalized British subjects, one resident in London and two in Frankfurt-on-the-Main. The two in Frankfurt were interned after war broke out as alien enemies, but under the Trading with the Enemy Act, 1914, as varied by the Trading with the Enemy Amendment Act, 1914, they were also alien enemies here. The partner in London obtained a declaration that the partnership was dissolved, and for the usual accounts, but such accounts were not to be taken till three months after the declaration of peace, and there was liberty given to apply as to fixing a date as from which the dissolution took place.—*KUPFER v. KUPFER, Neville, J.*, 221.

See also Prize Law.

#### TRAMWAYS:—

*Assault on passenger—Non-payment of fare—Whether conductor could eject—"Trespasser" under bye-laws—Onus of proof that conductor acted beyond scope of authority—Non suit—New trial.*—The plaintiff claimed damages against the L.C.C. for having been injured by one of their tramway conductors, who angrily threw him off a tramcar. At the trial the defendants, who called no evidence, submitted that, inasmuch as the powers of the Council were derived from their bye-laws, which did not, in terms at any rate, give power to eject a passenger for non-payment of fare, the conductor, who presumably ejected the plaintiff for that reason (although in fact he was willing and able to pay his fare), had acted from private spite and malice, for the consequences of which they were not liable. Neither the plaintiff nor the defendants were able to trace the car nor identify the conductor. *Ridley, J.*, non suited the plaintiff, and the Court of Appeal upheld his decision.

Held, that, under the bye-laws, a passenger who does not pay, or shews no intention of paying, his fare can be treated as a trespasser and ejected with the use of reasonable force. That it was a question for the jury to decide what was the motive in this case which prompted the conductor to eject the plaintiff; and there must be a new trial.

Decision of Divisional Court in *Whittaker v. London County Council* (1915, 2 K. B. 676) approved.—*HUTCHINS v. LONDON COUNTY COUNCIL, H.L.*, 156.

#### TRUSTEE:—

1. *Delegation—Execution of Trusts (War Facilities) Act, 1914* (5 Geo. 5, c. 13), s. 1—*Execution of Trusts (War Facilities) Amendment Act, 1915* (5 & 6 Geo. 5, c. 70), ss. 1 and 2.—A trustee cannot delegate the execution of the trust to his co-trustee under the Execution of Trusts (War Facilities) Act, 1914, he not being "a person capable of being appointed a trustee of the trust," as he is already a trustee and therefore incapable of being appointed to an office that he already holds.—*RE WELLS AND HOPKINSON, Astbury, J.*, 604; 1916, 2 Ch. 289.

2. *Legacy payable to trustee—Trustee in default—Set-off—Retainer—Assignees of trustee—Derivative title.*—The principle that a defaulting trustee cannot take any share or benefit in his testator's estate, unless and until he has made good his default, extends to the trustee's assignees, although the default takes place after the assignment; and applies to a derivative share as well as to an original share. The trustee, having had moneys of the testator's in his hands for which he has not accounted, must be taken to have paid himself out of them.

*Jacobs v. Ryance* (L. R. 17 Eq. 340) applied.—*RE DACRE, C.A.*, 306; 1916, 1 Ch. 344.

3. *Married woman—Purported marriage ceremony with another man—Administration taken out by him—Letters of administration*



*not revoked*—Administrator declared trustee for real husband.—A married woman went through a form of marriage with another man, her real husband still being alive, and died many years later. Thereupon the man with whom she had been living took out administration as her lawful husband, and later still her real husband arrived from abroad and heard what had happened, and brought an action.

Held, that, applying the principle in *Smart v. Tranter* (1890, 43 Ch. D. 587), the Court could and would make a declaration that the administrator was a trustee for the real husband.—*MINERS v. LAWRY, Astbury, J.*, 666.

See also Administration; Limitations, Statutes of.

#### VENDOR AND PURCHASER:—

1. *Breach of contract after sub-sale of part—Measure of damages—Particular items of damages allowed—Ascertainment of the selling value of the land at date of breach.*—On a contract for the sale of land, the measure of damages on a breach by the purchaser is the difference between the contract price—i.e., the amount of the purchase price which the vendor would have received if the contract had been fulfilled—and the value in money of the estate at the time of the breach.

*Janal v. Moolla, Dawood, Sons & Co.* (1916, A. C. 175) applied. The vendor is entitled to recover as damages the difference between the contract price and the selling price if realized within a reasonable time of the breach, and not the selling price if realized slowly and advantageously, as would be done if the property were nursed by a speculative builder.—*KECK v. FABER, Astbury, J.*, 253.

2. *Requisition on title—Recital that A is trustee for B—Notice of trust.*—A recital contained in a deed that the owner A of a legal estate in land is trustee for B is not notice of a trust to an intending purchaser so as to put him on inquiry, and does not entitle him to call for an abstract and production of and deed creating a trust for B.

*Harman v. Uxbridge and Rickmansworth Railway Co.* (24 Ch. D. 720) applied.

*Mulpas v. Ackland* (3 Russ. 273) explained.—*RE CHAFER AND RANDALL, C.A.*, 444.

3. *Specific performance—Contract contained in letters—Offer and acceptance—Subsequent preparation of formal contract different in terms—Further correspondence.*—Though in order to ascertain whether a correspondence between two parties contains a concluded contract the whole correspondence must be looked at, yet, if once a definite offer is made and accepted without qualification containing all the terms agreed on between the parties, the complete contract thus arrived at cannot be affected by subsequent negotiation not resulting in a new contract to take the place of the former one.

*Bellamy v. Debenham* (45 Ch. D. 481) followed.

*Dicta of Kay, J.*, in *Bristol, Cardiff and Swansea Aerated Bread Co. v. Maggs* (44 Ch. D. 616) dissented from.—*PERRY v. SUFFIELDS, C.A.*, 494.

#### WAR:—

*Crown—Defence of the realm—Compulsory occupation of land by military authorities—Public safety—Claim by owners for compensation—Defence Acts, 1842-1875—Defence of the Realm Consolidation Act, 1914* (5 Geo. 5, c. 8)—*Regulations of 27th November, 1914, r. 2—Military Lands Act, 1891-1903.*—Appeal by the suppliants from a decision of the Court of Appeal (reported 59 SOLICITORS' JOURNAL, 665; 1915, 3 K. B. 649), withdrawn on the terms of a settlement that compensation would be paid them for and in respect of certain lands and buildings thereon compulsorily taken by the military authorities after the outbreak of the war for the public safety.—*RE PETITION OF RIGHT OF X., H.L.*, 694.

#### WILL:—

1. *Annuity—"Clear of all deductions, including income tax"—Super-tax.*—Super-tax on income arising under a will is not a charge in respect of any particular annuity or sum bequeathed by the testator, but is a charge in respect of the recipient's whole income, and is not a matter with which the trustees would be charged or concerned at all.

An annuity given "free of all deductions" does not free the annuitant from liability to pay income tax.

See *Gleadow v. Leatham* (1882, 22 Ch. D. 269) and *Re Buckley* (1894, 1 Ch. 286).

Where an annuity is given "clear of all deductions, including income tax," the annuitant must herself pay super-tax.—*RE CRAWSHAY, Peterson, J.*, 275.

2. *Annuity—Trust to purchase—Annuity not purchased—Death of annuitant—Capital value or annual value.*—An annuitant is

entitled only to the annuity, and not to the fund which ought to have been laid out in the purchase of it.

*Day v. Day* (1 Drew, 569) not followed.—*RE STRANGE, Peterson, J.*, 640.

3. *Construction—Advances—Hotchpot—Necessary delay in distribution—Interest on advances—Method of calculation for distribution of income and capital—Quantum of interest—R.S.C.*, 1883, ord. 40, r. 64.—Where the will of a testator showed that he did not contemplate an immediate division of his estate, and each residuary legatee, until the final appropriation of his share, was entitled to a corresponding share of the income of the entire estate, and there was the usual hotch-pot clause and there had been advances,

Held, that those beneficiaries who had had advances ought to be charged with interest on their advances at the rate of 4 per cent., following the method adopted in the cases of *Re Poyser, Landen v. Poyser* (1908, 1 Ch. 828), *Re Craven, Watson v. Craven* (1914, 1 Ch. 358), and *Re Forster-Brown, Barry v. Forster-Brown* (1914, 2 Ch. 584); and that it was not necessary to value the whole estate, as at the testator's death (or at the expiration of one year therefrom), adding to the capital the amount of the advance and then deducting it from the share as was done in *Re Hargreaves* (1902, 86 L. T. 43; 1903, 88 L. T. 100).

The rate of interest to be allowed on such advances should be allowed at 4 per cent., in accordance with R.S.C., ord. 55, r. 64.

*Re Davy, Hollingsworth v. Davy* (1908, 1 Ch. 61), applied.—*RE COOKE, RANDALL v. COOKE, Younger, J.*, 403; 1916, 1 Ch. 480.

4. *Construction—Advances—Hotchpot—Period of distribution—Shares advanced and unadvanced—Interest.*—Where there is a gift to a tenant for life with remainder to a class and a hotchpot clause, but the estate cannot be divided immediately after the period of distribution on the death of the tenant for life, the advanced children must bring their advances into hotchpot with interest at 4 per cent. per annum up to the time when the estate is actually distributed, but such interest is only to be computed from the death of the tenant for life.

*Re Rees, Rees v. George* (1880, 17 Ch. D. 701), followed and applied.

The cases of *Re Lambert* (1897, 2 Ch. D. 169), *Re Poyser* (1908, 1 Ch. 828), *Re Willoughby* (1911, 2 Ch. D. 581-600), *Re Craven* (1914, 1 Ch. D. 358), and *Re Forster-Brown* (1914, 2 Ch. D. 584) followed.

The cases of *Re Hargreaves* (1903, 88 L. T. Rep. 100), *Re Gilbert* (1908, W. N. 63), and *Re Hart* (107 L. T. 757) not followed.—*RE TOD, Sargant, J.*, 403; 1916, 1 Ch. 567.

5. *Construction—Annuity—Per autre vie—Term pointed out—Prima facie meaning ousted—Sufficient indication to contrary in the will.*—Although *prima facie* an annuity is given for the life of the annuitant, yet, if another term for payment is pointed out that term is not inserted by way of restriction to the period of the annuitant's life, but is in substitution for that period.

*Savery v. Dyer* (1738, Ambler, 139) followed.

Where the only interest that the testator gave to his wife was restricted to her widowhood, and the benefits, other than those in respect of income given to the children, did not arise until the wife died or remarried,

Held, that the testator had sufficiently indicated an intention that the annuities given by the will to his children should continue during the widowhood of the testator's wife, and should not cease on the death of the annuitant.

*Re Ord* (12 Ch. D. 22) followed.—*RE CANNON, Sargant, J.*, 43.

6. *Construction—Contingency not to be implied to make gift offend perpetuity rule—Difference between direction not to divide till after the youngest has attained the age of thirty, and direction to divide among those who attain thirty.*—A direction to divide between A and her children by B, after the youngest of the said children should attain the age of thirty years, is not too remote, because it is not a direction to divide between her and such of those children as attain the age of thirty, no contingency being introduced by implication from the circumstances of the division not being directed till after the youngest had attained thirty.

*Dictum of Wigram, V.C.*, in *Leeming v. Sherratt* (3 Hare, 14) dissented from.

*Parker v. Sowerby* (1 Drew, 488) and *Lloyd v. Lloyd* (3 K. & J. 20) overruled.—*RE LODWIG, C.A.*, 494; 1916, 2 Ch. 26.

7. *Construction—Forfeiture clause—General clause applicable to both vested and contingent gifts—Repugnancy.*—A forfeiture clause in a will held to apply to every gift under the will and not only to the contingent gifts.

In deciding whether a forfeiture clause is repugnant and void the Court must consider whether the clause as a whole is an attempt to cut down and prevent what was to have been obtained under the gift.—*RE SMITH, Sargant, J.*, 368; 1916, 1 Ch. 369.

8. *Construction—Gift of "books, pictures, horses, carriages, furniture, and other household effects"*—*Motor-car—Album of postage stamps—Loose postage stamps.*—A motor-car passes under a gift of "horses, carriages, furniture, and other household effects," by virtue of the use of the word "other," for if a carriage is a household effect, then there is no reason why a motor car should not be a household effect.

*Re Hull* (1912, 107 L. T. Rep. 196) and *Re White* (1916, 1 Ch. 172) distinguished, on the ground that in those cases the collocation of the words precluded such an interpretation.

*Re Howe* (1908, W. N. 223) and *Re Ashburnham* (1912, W. N. 234) are not necessary for this decision.

A stamp collection in an album passes under a gift of "books." A stamp collection, whether in an album or loose, would pass under a gift of "books, pictures, &c., and other household effects," because a stamp is a picture or design of more or less merit.—*RE FORTLAGE, Peterson, J.*, 527.

9. *Construction—Gift of residue by will—Gift in codicil of residue "not bequeathed by will"*—*Revocation.*—A gift by a codicil of residue not bequeathed by the will of the testator revokes a residuary gift contained in the will, and does not merely operate to pass the property in gifts which may have failed by reason of lapse or otherwise to reach their destination.

*Earl of Hardwicke v. Douglas* (7 Cl. & Fin. 795) followed.

Decision of *Eve, J.*, reversed.—*RE STOODLEY, C.A.*, 221; 1916, 1 Ch. 242.

10. *Construction—Gifts to nephews and nieces—Inclusion of children of natural sisters.*—Where a testator specifically declared J. R. F. a natural son of a natural sister, and also W. H. H. a natural son of a legitimate brother, to be entitled to share equally with his other nephews and nieces, and used the word "sister" as including a reputed sister and the word "nephew" as including the son of a natural sister,

Held, that the testator, by treating or naming definite individuals as relations who were not strictly such, and by merely indicating that he was using a word of relationship in a looser sense than its strict one, had included in a general gift to relatives of that class, not merely specifically named individuals, but also other persons who were in a corresponding position.

*Hill v. Crook* (L. R. 6 H. L. 265) applied rather than *Dorin v. Dorin* (L. R. 7 H. L. 568).—*RE HELLIWELL, Sargant, J.*, 619.

11. *Construction—Issue—Parent—Issue directed to take their parent's share—Children only benefited.*—Where in a will there is a gift to certain persons, and if all or any of them should die before the period of distribution, the issue of any so dying leaving issue are directed to take the share which his, her or their deceased parent would have taken if living, the meaning of the word "issue" must be confined to children, unless there is some definite indication elsewhere in the will that "issue" must be given its wider meaning.

*Sibley v. Perry* (7 Vesey, 522) applied.

*Ross v. Ross* (20 Beav. 645) and *Ralph v. Carrick* (11 Ch. D. 873) distinguished.—*RE TIMSON, C.A.*, 526; 1916, 2 Ch. 362.

12. *Construction—Legacy—"Servants"—Who included—Labourers—Servants who minister to your comfort.*—Where a testator bequeathed to each of his servants who should have been in his service for three years prior to his decease, and should be still in his service, one year's wages free of legacy duty,

Held, that the gift did not extend to include farm servants engaged in the usual way for twelve months, and paid weekly, but only included servants who ministered in some way to the testator's comfort.—*RE FORREST, Sargant, J.*, 655.

13. *Construction—Meaning of words, "Statute for the Distribution of Estates of Intestate Persons"—"Statute" not "Statutes."*—Where a will referred to "the Statute for the Distribution of the Estates of Intestate Persons," it was held that these words were intended by the testator to be only equivalent to "by law" owing to their inaccuracy to describe the Statutes in that behalf, which are three in number, and accordingly that, as regards real estate, the words denoted the heir-at-law.—*RE HUGHES, Younger, J.*, 418; 1916, 1 Ch. 493.

14. *Construction—"Money"—Residuary personalty.*—Evidence is admissible that a testatrix's property was practically the same at the date when she made her will and at the date of her death, when it is admitted for the purpose of shewing the surrounding circumstances, but not when it is admitted for the purpose of shewing the intention of the testatrix.

Where the testatrix gave and bequeathed her "money" to be equally divided between her two nieces, and expressed her wish that all her personal property in the house of either of such nieces at her death should belong to such niece,

Held, that the gift of "money" passed the entire residuary per-

sonal estate, because the later gift in effect assumed that she had already given all to these two nieces.—*RE SKILLEN, Sargant, J.*, 387; 1916, 1 Ch. 518.

15. *Construction—Provision against lapse by death of legatee—"This my will"—Bequest by codicil, and death of legatee before testatrix—"Will" the entire testamentary disposition.*—A testatrix by her will declared that no legacy "given by this my will" should lapse by reason of the death of the legatee before her, but should take effect as if the legatee had died immediately after her, and pass to his legal personal representatives. The testatrix made several codicils to her will, by one of which she revoked legacies given to persons who had since died, and by the seventh and last bequeathed a leasehold house and its contents to a person who predeceased.

Held (affirming *Sargant, J.*), that the words "this my will" meant the whole of the testatrix's testamentary disposition, and therefore that the clause against lapse applied to the gift in the codicil.

*Bonner v. Bonner* (13 Ves. 379) and *Henwood v. Overend* (1 Mer. 23) overruled.—*RE SMITH, PRADA v. VANDROY, C.A.*, 603.

16. *Construction—Rule in Howe v. Earl of Dartmouth—Right of tenant for life to income in specie.*—Where a testator gave all his real and personal estate to a trustee, with a trust for sale and conversion, a power to postpone such sale, and a direction to re-invest in specified securities, such postponement and re-investment all to be subject to the consent of the testator's wife, who under the will was tenant for life of the whole property, and where the estate at the death of the testator comprised some unauthorized securities, producing income of more than 4 per cent. on the capital value,

Held, that the tenant for life had the right to enjoy the whole of the income *in specie*, and that her consent was vital and was not merely a consent only to be given for purposes of administration.

*Re Bentham, Pearce v. Bentham* (94 L. T. 307), followed.—*RE ROGERS, Neville, J.*, 27; 1915, 2 Ch. 437.

17. *Construction—Rule in Shelley's case—Estate tail—Devise to A "and his male heir for ever"—Rule in Archer's case.*—A devise to A "and his male heir for ever" confers upon A an estate in tail male by the operation of the rule in *Shelley's case* (1581, 1 Rep. 93b), for there is not sufficient to shew that the testator intended that the heir was to take as the root of a new descent to introduce the principle of *Archer's case* (1597, 1 Rep. 66b), the words "for ever" having been held in *Fuller v. Chamier* (1866, L. R. 2 Eq. 682) not to make any difference, nor yet the use of the words "male heir" instead of "heirs male": *Doe v. Angell* (1846, 9 Q. B. 328) and *Blackburn v. Stables* (1814, 2 Ves. & B. 367).—*SILCOCKS v. SILCOCKS, Younger, J.*, 445.

18. *Will—Construction—Shelley's case—Sum set apart for the purchase of an estate—Conveyance to be settled by counsel—Trust for life and to use of heirs male in tail "in the usual way."*—Where money was to be spent on the purchase of a residential estate, "which real estate shall be settled by a deed of conveyance to be approved by the conveyancing counsel of the Court of Chancery upon the trusts following, that is to say, upon trust for my said wife for life, and on her decease in trust for my said nephew, R. W. Kirby, for life, and on his decease to such uses as he shall by will appoint, and in default of such appointment to the use of his heirs male in tail in the usual way,"

Held, that the rule in *Shelley's case* (1579, 1 Rep. 88) did not operate to give R. W. Kirby an estate tail, but only a life estate, for the words "in the usual way" were not part of the words of limitation, but merely an indication that the conveyancing counsel was to frame the limitations in the usual way.

*Seale v. Seale* (1715, 1 P. Wms. 290) was mainly a decision as to the impossibility of creating an estate tail in personal estate in the reign of George I.—*RE HOWARTH, Peterson, J.*, 307.

19. *Construction—Specific legacies—Cost of transfer—Incidence—On specific legatees or on residue.*—The costs of transfer of specific legacies are not costs incurred by the executors in getting in the estate for distribution, but are incurred after the specific legacies have been assented to by the executors, and accordingly these costs must all be borne by the specific legatees, because they are costs which the specific legatees must pay in order to complete their title to their specific property, which the executors, after assent, hold as trustees for them, and not as executors.

*Re de Sommers* (1912, 2 Ch. 622) and *Re Scott* (1915, 1 Ch. 592) applied.—*RE GROSVENOR, Astbury, J.*, 681.

20. *Destruction of codicil on faith of promises of devisee—Operative effect of previous codicil.*—When a man dealing with a person who is making testamentary dispositions of his property promises that, if a certain thing is done by the will either in his own favour or in the favour of some nominee of his, and upon the faith of that



promise the testator executes a testamentary disposition, a subsequent action by the person who makes the promise in contradiction of that promise is a fraud, and a court of equity will give relief and enforce the promise.—*THARP v. THARP, Neville, J.*, 176; 1916, 2 Ch. 205.

21. *Equitable contingent remainders—Saved from failure—Seisin in executors—Assent of executors—Land Transfer Act, 1897, ss. 2, 3.*—Since the Land Transfer Act, 1897, the old feudal law as to seisin does not apply to equitable contingent remainders which do not fail but are saved by being vested in the executors. Although on executors assenting to the devise the legal estate vests in the tenant for life, yet if at the death of the testator infants become contingently entitled in remainder the contingent remainders are equitable and the subsequent clothing of the tenant for life with the legal estate does not destroy the equitable contingent remainders, and accordingly they do not fail though not vested at the death of the tenant for life.—*RE ROBSON, Astbury, J.*, 222; 1916, 1 Ch. 116.

22. *Estate duty—Direction to pay duties out of residue—New duties imposed after death of the testator—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 5—Finance Act, 1914 (4 & 5 Geo. 5, c. 10), s. 14.*—Where a testator who had specifically settled certain funds under his will directed that all legacy, annuity, succession or other duties payable in respect of all and every the benefits given by that his will, except duties payable by his residuary legatees, should be borne and paid by his residuary trust estate, and after the testator's death a new Finance Act was passed imposing fresh duties,

Held, that the direction extended to all succession, legacy and estate duties payable on the deaths of the tenants for life of the specifically settled funds.

Held, that *Re Snape, Elam v. Phillips* (59 SOLICITORS' JOURNAL, 562; 1915, 2 Ch. 179), is overruled by *Re Palmer* (ante, p. 565; 1916, W. N. 229), in so far as the former laid down any general principle as to future duties.—*RE HATCH, Sargant, J.*, 567.

23. *Estate duty—Settled legacies—To be paid free of death duties—Duty imposed after death of testator—Finance Act, 1914, s. 14.*—The application of a will can be enlarged beyond the date of the testator's death if the construction of the will admits of it. The words "to be paid and enjoyed free of all death duties," which duties were to be paid or provided for out of the moneys arising from the sale of the residuary estate, were held, owing to their comprehensiveness and the use of the word "provide," to embrace death duties imposed by statute after the death of the testator.

*Re Palmer* (ante, p. 565) applied.—*RE STODDART, Sargant, J.*, 586.

24. *Estate duty—Settled legacy—Legacies to be paid "free of all duties"—New estate duty imposed after testator's death—Annuity payable out of income of settled residue—Incidence of duties—Finance Act, 1914 (4 & 5 Geo. 5, c. 10), s. 14.*—A testator, having by his will settled his real estates in strict settlement, bequeathed to trustees a legacy of £25,000 in trust to pay the income thereof to the person for the time being entitled to the income of the real estate. He directed all legacies and annuities thereinbefore or by any codicil thereto given to be paid free of duty. He further gave his residuary real and personal estate upon trusts for conversion and investment, and out of the income thereof to pay an annuity of £3,000 to the person entitled to his real estate as aforesaid. The testator died in 1913, and the first tenant for life in 1915. Under the Finance Act, 1914, s. 14, the exemption in favour of settled estates from payment of estate duty contained in the Finance Act, 1894, s. 5, was abolished.

Held (reversing *Younger, J.*), that the estate duty payable on the death of the first tenant for life on the settled legacy must be borne by that legacy, the direction to pay free of duty contained in the will applying only to the duty payable on the testator's death, while the corresponding duty on the annuity of £3,000 must be borne by the general residue and not by the annuity alone, or any notional capital sum, part of such residue, sufficient to provide for its payment.—*RE PALMER, C.A.*, 565.

25. *Furniture and other articles of personal, domestic or household use—"Carriages"—Motor-car.*—A motor-car does not pass under a gift of "carriages."

*Re Hall, Watson v. Hall* (1912, 107 L. T. Rep. 196) followed.

*Re Dennis* (1908, 24 L. T. Rep. 499) not followed.

A motor-car does pass under a general gift of "furniture and other articles of domestic or household use."

*Re Ashburnham, Gaby v. Ashburnham* (1912, 107 L. T. Rep. 601) followed.—*RE WHITE, Younger, J.*, 210; 1916, 1 Ch. 172.

26. *Gift of shares—Reconstruction—Inclusion of stock.*—A gift of "all my shares in" the A, B, and C companies was held to pass preferred ordinary stock into which the shares in the company had been converted on a reconstruction of that company and

amalgamation with another company, but not a debenture bond which had been created by a reconstruction of the A company, nor debenture stock of the C company similarly created on a reconstruction.—*RE HUMPHREYS, Sargant, J.*, 105.

27. *Joint tenancy or tenancy in common—Class taking original share by substitution—Advancement clause.*—Where an advancement clause applied to any person entitled to a benefit under the will, and was accordingly applicable to the class of persons who took by substitution the share of a deceased beneficiary, by reason of his having died in the lifetime of the testator, the principle that the power of advancement is only consistent with a tenancy in common, and is not consistent with a joint tenancy, applies to create a tenancy in common.

The principle laid down in *L'Estrange v. L'Estrange* (1902, 1 I. R. 467) applied.—*RE DUNN, Astbury, J.*, 175; 1916, 1 Ch. 97.

28. *Legacy—Condition as to priority—Subsequent codicil—Settled legacy substituted.*—The rule of construction that, *prima facie*, a substituted legacy is subject to the same conditions as an original legacy, is not confined to cases where the only change introduced is one of amount, but may sometimes apply to cases where the legatee, under the substituted gift, is a different person from the original legatee.

*Leacroft v. Maynard, Pearson v. Leacroft* (1791, 1 Ves. Jun. 279, 3 Bro. C. C. 233), followed.

*Re Joseph* (1908, 2 Ch. 507) distinguished.—*RE BACKHOUSE Sargant, J.*, 121; 1916, 1 Ch. 65.

29. *Perpetuity—Personalty settled by reference to realty—Tenant-in-tail in possession adult.*—A bequest by a testator of all his real and personal estate to trustees as to the personal estate upon trusts for conversion and investment, and upon trust to pay the income thereof to the person, if any, who under the trusts or limitations thereafter contained should for the time being be tenant for life of or otherwise entitled to the possession or receipt of the rents and profits of his real estate until such real estate should become vested in some person who should become adult tenant-in-tail thereof in possession, and from and after the happening of such last-mentioned event, then as to both capital and income upon trust for such last-mentioned person absolutely—apart from the gift of the income thereof to the joint tenant for life, which was not questioned by the summons—raised a question as to whether such a bequest of personal estate was void for remoteness, as not being limited in terms in favour of a tenant-in-tail by purchase.

Held, following *Duncannon v. Smith* (1846, 12 Cl. & F. 546) that such a bequest is void for remoteness.

*Christie v. Gosling* (1866, L. R. 1 H. L. 279) and *Martelli v. Holloway* (1872, L. R. 5 H. L. 532) not applicable. The third paragraph to the headnote of the report of *Martelli v. Holloway* not wholly justified by the judgments.—*RE ATKINSON, Sargant, J.*, 190; 1916, 1 Ch. 91.

30. *"With benefit of survivorship in the same family"—Construction.*—Gift, after an estate for life, to A, B, and C, who was the daughter of B, "in equal shares, with benefit of survivorship, in the same family."—A and B died before the tenant for life.

Held, that the words "in the same family" confined the "benefit of survivorship" to B and her daughter C, and accordingly the estate of A took one-third and C took the remaining two-thirds.

The principle of *Re Craehall's Trusts* (1856, 8 De G. M. & G. 480) applied.—*RE SADLER, Joyce, J.*, 89.

## WORKMEN'S COMPENSATION :—

1. *Attendant in Central (Criminal) Asylum, Ireland—Injury by accident—Retired with a pension—Whether regard should be had to pension in fixing amount of weekly payments—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), ss. 1, 9, Schedule 1 (3).*—The respondent, while employed as an attendant at a county asylum in Ireland, met with an accident that entitled him to claim compensation under the Workmen's Compensation Act, 1906. The accident rendered him permanently incapacitated from continuing his work at the asylum, and he was retired as unfit for further service, and was paid a gratuity and a pension under the Superannuation Act, 1909. The question of the amount of the weekly payments was referred to the recorder, who, in making his award, stated that he had regard to all the proved circumstances, including the fact that the applicant was receiving a pension from the asylum authorities, though he said he did not take into account the amount of the pension.

Held, the recorder was right in taking the pension into account in making his award.—*CONSIDINE v. MCINERNEY, H.L.*, 456.

2. *Workmen's compensation—Course of employment—Accumulation of water in a pit—Workman ordered to bale out water—Work necessitating standing in water up to his chest—Extreme and exceptional exposure to chill—Sub-acute rheumatism—Workmen's*

*Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1.*—On 23rd October, 1914, a breakdown of the pump in a colliery belonging to the appellants led to an accumulation of water, which caused a suspension of work in that pit. Five days later the respondent, a miner, descended the pit, in the belief that he was going to his work as a brusher. When he got down the pit he was directed to bale out the water, and, in doing so, he required to stand immersed in water up to his chest for eight hours. He suffered from stiffness and cold and pains in his joints, which after three or four days rendered him unfit for work, and a doctor found that he was suffering from sub-acute rheumatism. The Sheriff-Substitute held that he was injured by accident arising out of and in the course of his employment. The Court of Session upheld the award. The employers appealed, on the ground that the respondent was not incapacitated through injury by "accident."

Held, dismissing the appeal, that the miscalculated action of entering the water by the respondent must be taken to have constituted a definite event, which culminated in rheumatic affection, and that that miscalculation imported into that event the character of an "accident" within the meaning of the Act.

*Fenton v. Thorley & Co. (Limited)* (1903, A. C. 443) followed.—*GLASGOW COAL CO. v. WELSH, H.L.*, 336; 1916, 2 A. C. 1.

3. *Course of the employment—Bicycle accident in London—Risk common to the general public—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).*—A boy employed as a plumber's mate was sent on business errands by his employers on a bicycle kept on their premises, which he used to ride through London streets on an average once a day. A motor-car collided with him in a busy thoroughfare, and he was injured.

Held (Sargant, J., dissenting), that there was evidence upon which the county court judge could find as a fact that the accident did not arise out of the employment, on the ground that the risk which caused it was one common to the general public.—*DENNIS v. WHITE & Co., C.A.*, 385; 1916, 2 K. B. 1.

4. *Course of employment—Bicycle accident to solicitor's clerk on business journey—No risk incidental to employment—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).*—A clerk to a solicitor practising in Rochester had, in the course of his employment, to attend petty sessions at Northfleet, a place ten miles distant, once a week. As a general rule he went there and back by train, his employer paying the fare, but he sometimes made the journey on his own bicycle to his employer's knowledge. While he was cycling back to Rochester a motor lorry collided with him and he was killed.

Held, that the accident did not arise out of the employment.—*READ v. BAKER, C.A.*, 402; 1916, 1 K. B. 927

5. *Course of the employment—Bombardment of coast town by enemy—Engine-driver on duty wounded—Risk common to general public—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).*—A railway engine-driver while on duty in charge of his engine was wounded by the explosion of a shell fired by the enemy during the bombardment of the Hartlepoons.

Held, that as the evidence shewed he was not exposed to any greater risk than other persons who were out of doors at the time in the same locality, the accident did not arise out of the employment.

*Kelly v. Kerry County Council* (42 Ir. L. T. 23) applied.—*COOPER v. NORTH EASTERN RAILWAY, C.A.*, 105.

6. *Course of employment—Boys picking stones out of coal—Stone tortiously thrown—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).*—A lad, while working as a belt boy in a coal mine was hit in the eye by a stone thrown by a boy employed at a neighbouring belt, and lost the sight of his eye. There were notices to the effect that stone-throwing in the mine was prohibited. There was evidence that the boys occasionally threw stones at each other for the purpose of attracting attention.

In proceedings to recover compensation, the county court judge found that the stone was thrown mischievously, but whether it was aimed at the applicant or not he did not know, and he thought it immaterial, because in any event it was a tortious act. Upon these facts he held that the nature and circumstances of the applicant's employment were such as to expose him to a special risk of stone-throwing by other boys, and he awarded him compensation. The Court of Appeal reversed the award.

Held, that the question was one of fact, and therefore one for the county court judge. His award therefore could not be set aside if there was any evidence, even though slight, upon which his finding could reasonably be supported.

Decision of Court of Appeal (111 L. T. Rep. 788, 7 B. W. C. C. 643) reversed.—*CLAYTON v. HARDWICK COLLIERY, H.L.*, 138.

7. *Course of the employment—Collier, with employer's permission, leaving work before end of shift—Attempts to pass between tubs and gets crushed—Added peril not incidental to the employment—Work-*

*men's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).*—A collier, who was in a hurry to leave the pit for his own purposes, attempted to pass between some tubs at a time of danger, when they were being moved by means of machinery, instead of waiting until that danger was over, and was caught between a tub and the stop-block, receiving injuries which proved fatal. The county court judge held, on the evidence, that the widow had not discharged the onus upon her of shewing that the accident arose out of the deceased man's employment, and made his award in favour of the respondent. The Court of Appeal affirmed his decision, and the dependant appealed.

Held, that the question whether the applicant had shewn that the accident arose out of the deceased man's employment was a question of fact for the judge, and, there being evidence to support his finding, and no misdirection, his decision was conclusive, and the Court had no jurisdiction to review the award.

Decision of Court of Appeal (9 B. W. C. C. 70) affirmed.—*BAKER v. EARL OF BRADFORD, H.L.*, 493.

8. *Course of employment—Disappearance of seaman at sea—Chief engineer falls overboard—Evidence that he worried about defects in propeller—No direct evidence of death—Presumption from circumstantial evidence—Accident arising out of employment—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).*—The chief officer of a steamship disappeared at sea. No one saw him fall overboard or in a place where there was a danger of so falling, but it was proved that he was anxious about the behaviour of the propeller, and had given orders to be called, and had arisen earlier than usual, presumably to endeavour to observe it, and that he could do so, but at some personal risk, by getting over the stern rail.

Held, that there was evidence to support the finding of the county court judge that the accident arose "out of" the employment.

Decision of Court of Appeal (59 SOLICITORS' JOURNAL, 629; 1915, 3 K. B. 344) affirmed.—*THE SERBINO v. PROCTOR, H.L.*, 272; 1916, 1 A. C. 464.

9. *Course of employment—Drinking water provided on ship for use of seamen—Seaman drinking water from can belonging to another seaman containing a solution of caustic soda—Evidence that water was commonly put in cans by crew to get cool—Evidence failing to support finding that accident arose "out of" seaman's employment—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1.*—A steamer belonging to the appellants was lying in Spezzia Harbour. The weather was very hot. The crew were in the habit of getting their drinking water from the tank and putting it to cool in cans in various parts of the ship. McKinnon was one of the seamen on board, and by mistake he drank from a tin containing a solution of caustic soda, believing it contained drinking water which a mate had put out to cool. In consequence he was seriously injured. The Sheriff Substitute awarded him compensation, and the Judges of the Second Division of the Court of Session affirmed his award.

Held, after consideration, that there was no evidence to support the award so far as it was found that the accident arose "out of" the employment.

Decision of Court of Session (1915, Sc. L. R. 22) reversed.—*HUTCHINSON v. MCKINNON, H.L.*, 320; 1916, 1 A. C. 471.

10. *Course of the employment—Shunter riding on buffer contrary to rules—Acting outside sphere of employment—New and added peril—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).*—A shunter, whose duty it was to walk in front of or alongside the wagons being shunted when wagons were being pushed by an engine moving tender first, since the engine had some distance to go, got on the buffer of the first of four wagons the engine was pushing, and was seriously injured by falling from it. It was not his duty to ride on a wagon, and the employers' rules strictly prohibited riding on wagons in motion.

The Court of Appeal (Phillimore, L.J., diss.) held that the accident did not arise out of and in the course of his employment, and, setting aside an award in favour of the applicant, entered judgment for the respondents. The workman appealed.

Held, after consideration, by a majority of the House (Earl Loreburn and Lord Parmoor dissenting), that the decision appealed from was right. The rule required a shunter, acting as the look-out man, to walk in front of the wagons so as to be able to warn the engine-driver of danger or obstacles, and therefore by seating himself on the buffer he lost his right to compensation, for the simple reason that the prohibition placed the latter work outside the sphere of his employment.

Decision of Court of Appeal (59 SOLICITORS' JOURNAL, 249; 1915, 2 K. B. 81, 8 B. W. C. C. 94) affirmed.—*HERBERT v. SAMUEL FOX & Co., H.L.*, 237; 1916, 1 A. C. 405.

11. *Damages for loss of husband—Damages awarded less than compensation recoverable under Workmen's Compensation Act—*



**Adequacy—No misdirection—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (4)—Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), s. 2.**—In an action for damages for negligence on the part of a colliery company, causing the death of a collier, the jury awarded the plaintiff, his widow, £225 for herself and her daughter. If she had made a claim for compensation under the Workmen's Compensation Act she would, on the basis of average weekly wages, have been entitled to receive £300, but no more.

Held, there was no misdirection in the judge not having stated this to the jury or referred to the Act, and to have done so might have tended to limit the damages actually given.

Held, also, that the damages were not inadequate.—PRICE v. GLYNNE, &c., Co., C.A., 274.

**12. Dependant—Husband and wife—Wife's father taken in as lodger—Wife agent of husband—No dependency in fact—Workmen's Compensation Act, 1906, s. 13.**—A married woman, living with and supported by her husband out of his earnings, with his consent took in her father, who was earning considerably less, as a lodger, he paying her a fixed weekly sum for board, lodging and attendance, and giving certain assistance in kind, which together afforded her a small profit. The father, having met his death by accident arising out of, and in the course of, his employment,

Held, that the county court judge was right in holding on the facts that the woman was not dependent at all on her father's earnings.—MONTGOMERY v. BLOWS, C.A., 427; 1916, 1 K. B. 899.

**13. Dependant—"Notice . . . as soon as practicable"—Delay—Prejudice—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 2 (1) (a).**—On 7th April, 1914, a workman injured his hand. He bandaged it and went on working. On the same afternoon he told the employers' manager of the accident. The wound healed up in a week. Later he had some trouble in his arm which he attributed to gout. He then stayed away from his employment, and on 4th May he consulted a doctor for the first time, and was told that he was suffering from blood poisoning, the result of the cut on his hand. No written notice of the accident was given till 29th May, and the man died on 31st May.

The Court of Appeal held that the claim was not maintainable, and the widow appealed.

Held, allowing the appeal, that there was no evidence that the delay had prejudiced the employers.—EYDMANN v. PREMIER ACCUMULATOR CO., H.L., 401.

**14. Dependency, total or partial—Illegitimate child of married woman—Payment of father's earnings to mother—Husband enlists in Army—Wife in receipt of separation allowance—Evidence—No common fund—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 13, Schedule I. (1).**—A woman with three children having been deserted by her husband, who failed to maintain her, cohabited with another man as his wife, and ultimately had an illegitimate child by him. He maintained the woman and her family, paying over to her almost all his weekly earnings. Some time before the child was born the husband enlisted in the Army, and the wife thereupon became in receipt of a weekly separation allowance for herself and her three legitimate children. The father of the illegitimate infant having met his death by accident,

Held, that, there being no evidence that the separation allowance was paid into a common fund with the father's wages, and used to support the infant, the latter must be presumed to be wholly dependent on the father's earnings.—TAYLOR v. POWELL DUFFRYN CO., C.A., 665.

**15. Disease—Cattle ringworm—Contagion from animals—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).**—A young woman employed to feed calves on a farm claimed compensation for injury by accident, and adduced evidence to prove that she had been infected with "cattle ringworm" by contact in the course of her duties with calves which were suffering from that disease. The county court judge, without calling on the respondent, held that, assuming the applicant's evidence to be true, she had not proved any injury by accident within the Act, and that, as cattle ringworm was not an industrial disease, she could not recover.

Held, that as disease may be contracted by accident, he had misdirected himself, and the case must be remitted to him to be properly tried.—SCOTT v. PEARSON, C.A., 428; 1916, 2 K. B. 61.

**16. Heat-stroke—Evidence of gradually increasing exhaustion—No sudden seizure—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).**—A stoker employed on a steamer navigating the Red Sea was certified to have died from "heat-stroke" after having collapsed in the course of his employment. The evidence was that the deceased had suffered from exhaustion caused by the effects of working in a very high temperature for some days before his death, and that the final collapse was not sudden or unexpected. The county court judge thought that "heat-stroke" necessarily connoted a sudden event, and therefore that the death arose from accident.

Held, that the death was due to voluntary submission to a well-known cause likely to affect the deceased, and that there was no evidence of accident.

*Ismay, Imrie & Co. v. Williamson* (1908, A. C. 437) distinguished.—PYPER v. MANCHESTER LINERS, C.A., 706.

**17. Incapacity due to injury—Loss of one eye—Recovery and suspensory award—Inflammation in other eye unconnected with accident—Review.**—A miner lost the sight of one eye by accident. Compensation was paid for a time, but he was ultimately able to return to work and earn full wages. A suspensory award was made in his favour. Two years later he applied for a review and increase of weekly payment on the ground that he was suffering from inflammation of the other eye and could not work underground. The county court judge found on the medical evidence that the inflammation had no connection with the accident and therefore that the workman was not suffering from incapacity due to the injury.

Held, that he had not misdirected himself, the only object of keeping the award open being in the event of trouble, due to the original accident, supervening in the other eye.—HART v. CORV BROTHERS, C.A., 89; 1916, 1 K. B. 172.

**18. Industrial disease—Liability of recurrence after recovery—Increased susceptibility—Congenital defect—Onus of proof—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), Sched. I. (1) (b).**—A miner who had been incapacitated by an industrial disease, and had been paid compensation, completely recovered, and the compensation was stopped. He then applied for an award as being partially incapacitated owing to increased susceptibility from having once had the disease, and adduced medical evidence to this effect. There was unanimous medical evidence, however, that such susceptibility was also due to a congenital defect from which he suffered. The county court judge held there was no incapacity and dismissed the application.

Held, that there was no misdirection.—JONES v. GUEST, KEEN, & NETTLEFOLDS, C.A., 75.

**19. Infant suffering from permanent injury—Right of employer to redeem weekly payment—Right of workman to review and increase—Applications both for review and redemption pending—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), Schedule I. (16), (87).**—A girl of thirteen years of age met with an accident arising out of and in the course of her employment, which caused permanent injuries to one of her hands. Five years later, the hand having reached a condition of stability, the employers applied for redemption of the weekly payment they were making. The respondent having appeared to an irregular service of this application, applied for an increase on the ground of increased earning powers but for the injury. Both applications were set down for hearing on the same day, the employers' being first.

Held, that the employers' right to redeem the existing payment was not absolute, but subject to the workman's right to review and obtain an increase of the payment.—ELEY v. MORELAND & SONS, C.A., 59; 1916, 1 K. B. 85.

**20. Loss of eye—Suspensory award—Offer of old work by employers—Refusal by workman—Suitability of work—Seriousness of possible accident to remaining eye—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), Schedule I.**—A workman employed in a gang of four at a steam-hammer lost one eye by accident. The employers paid compensation, and submitted to a suspensory award on the man's recovery. They then offered to take him on at his old work at the former rate of wages. The county court judge found that the work was not suitable, because, among other reasons, any accident to the remaining eye might make him blind, and made an award in his favour.

Held, that the award was justified on the evidence. Also *per* Lord Cozens-Hardy, M.R., and Sargant, J. (Phillimore, L.J., dissenting), in awarding compensation for the loss of an eye, the seriousness of any future accident to the remaining eye is a proper element to be taken into consideration.—JACKSON v. HUNSLET ENGINE CO., C.A., 386.

**21. Proceedings for compensation—Instigation by approved society—Retainer signed by applicant—"Unreasonably refuses or neglects"—Maintenance—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 11 (2).**—A domestic servant, having met with injury by accident in the course of her work, applied to her approved society, under the National Insurance Act, 1911. The society instigated proceedings by her for compensation, under the Workmen's Compensation Act, 1906, induced her to sign a retainer to their solicitors, gave her a partial indemnity against the costs, and found the out-of-pocket expenses. The county court judge held that the proceedings were taken by the woman, and awarded her compensation.

Held, that this was a finding of fact that could not be interfered with, and if the conduct of the society amounted to maintenance in law, that was no defence to the proceedings.—*SKEILTON v. BAXTER, C.A.*, 120; 1916, 1 K. B. 321.

22. *Relation of employer and workman—Jobbing grinder—Rent paid for use of machinery—Right to work for outside firms—Accident while working for another firm—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), ss. 1, 13.*—A workman engaged as a "jobbing grinder" in the Sheffield cutlery trade claimed compensation for injury by accident. He had contracted to occupy space and use certain power-driven machinery at the works of the respondents, who supplied him with work, paid for at piece rates. If this work did not occupy all his time he could take in and do work for outside firms, and he met with the accident while engaged on such work.

Held, that whether or not the relation between the applicant and the respondents was one of employer and workman, in any case the accident did not arise in the course of such employment.—*OATES v. TURNER & Co., C.A.*, 639.

23. *Visiting nurse—Use of bicycle in residential district—Cycling accident—Ordinary street risk—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1 (1).*—A nurse, employed by a local education authority in a residential rural district, had in the course of her duty to ride a bicycle from six to ten miles a day, calling at houses to inspect children. While so engaged she met with an

accident, the machine skidding and throwing her under the wheel of a cart, seriously injuring her thumb.

Held, that the accident was due to an ordinary street risk, common to all cyclists; that cycling could not be considered other than a safe means of locomotion; and therefore that the accident did not arise out of the employment.—*INCE v. REIGATE EDUCATION COMMITTEE, C.A.*, 666.

24. *"Workman"—Contract of service—Member of gang employed by sub-contractor to unload barge—No contract of service with principals—Work undertaken by principal—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 78), ss. 4 and 13.*—In circumstances that raised the question whether the applicant, one of a gang of men engaged to unload a barge, was employed by the ganger or by the respondents, the county court judge found that a contract of service existed between the applicant and the respondents, and he made an award in his favour. The Court of Appeal were of opinion that there was no evidence of any contract of service as found, and further, that the unloading was not "work undertaken" by the respondents within the meaning of section 4 (1), and therefore they were not liable as principals.

Held, that there was evidence, though only faint, upon which the county court judge could reasonably hold that there was a contract of service between the applicant and the respondents, who were therefore liable to compensate him for injury he received while unloading the barge.—*BOBBY v. CROSBIE & Co., H.L.*, 173.



# STATUTES

Enacted in the Session of Parliament, 1915.

## 5 & 6 GEO. 5.

### CHAPTER 80.

#### CONSOLIDATED FUND (NO. 4) ACT, 1915.

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March, one thousand nine hundred and sixteen. [29th September, 1915.]

### CHAPTER 81.

#### AMERICAN LOAN ACT, 1915.

An Act to enable a Loan to be raised in conjunction with the French Government in the United States of America. [13th October, 1915.]

Be it enacted, &c. :-

1. *Power to raise a loan in America.*—(1) Any sum not exceeding five hundred million dollars may be raised if the Treasury think fit by the issue of securities at such rate of interest and subject to such conditions as to repayment, redemption, or otherwise as they think fit in the United States of America, and may be raised in conjunction with the Republic of France and subject to such conditions as may be agreed upon between His Majesty's Government and the Government of the Republic of France, either as to the raising or the application of the loan, and may be raised on the joint and several obligation of the two Governments.

(2) For the purposes of the charge on the Consolidated Fund, and for the purposes of any limit on the amount of borrowing, the powers of raising money given by this Act shall, so far as they extend, be deemed to be in substitution for the existing powers of raising money for any supply granted to His Majesty.

(3) Any securities issued for the purposes of any such loan in the United States of America, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom, shall not be liable to any taxation, present or future.

2. *Short title.*—This Act may be cited as the American Loan Act, 1915.

### CHAPTER 82.

#### POST OFFICE AND TELEGRAPH ACT, 1915.

An Act to alter certain statutory limits of Postal and Telegraph Rates; and for purposes connected therewith. [28th October, 1915.]

[Printed 60 SOLICITORS' JOURNAL, p. 73.]

### CHAPTER 83.

#### NAVAL AND MILITARY WAR PENSIONS, &c., ACT, 1915.

An Act to make better provision as to the pensions, grants, and allowances made in respect of the present war to officers and men in the Naval and Military Service of His Majesty and their dependants, and the care of officers and men disabled in consequence of the present war, and for purposes connected therewith. [10th November, 1915.]

Be it enacted, &c. :-

1. *Establishment of Statutory Committee of Royal Patriotic Fund Corporation.*—(1) For the purposes hereinafter mentioned relating to pensions and grants and allowances made in respect of the present war to officers and men in the naval and military services of His Majesty and their wives, widows, children and other dependants, and the care of officers and men disabled in consequence of the present war there shall be constituted a Statutory Committee of the Royal Patriotic Fund Corporation (hereinafter referred to as the Corporation) consisting of twenty-seven members, appointed as hereinafter mentioned.

(2) Of the said twenty-seven members—

- twelve (of whom one shall be chairman and one vice-chairman and some shall be women and not less than two shall be representatives of labour) shall be appointed by His Majesty;
- one shall be appointed by the Treasury;
- one shall be appointed by the Admiralty;
- one shall be appointed by the Army Council;
- one shall be appointed by the National Health Insurance Joint Committee;
- one shall be appointed by the Local Government Board;

one shall be appointed by the Local Government Board for Scotland;

one shall be appointed by the Local Government Board for Ireland;

two shall be appointed by the Soldiers and Sailors Families Association;

six (of whom some shall be women) shall be appointed by the General Council of the Corporation.

(3) Four of the members appointed by the General Council of the Corporation shall be appointed from amongst the members of the Corporation, but, save as aforesaid, it shall not be necessary that the persons appointed to be members of the Statutory Committee should at the time of appointment be members of the Corporation.

(4) There may be paid to the chairman or vice-chairman, out of moneys provided by Parliament, such salary as the Treasury may determine.

(5) All other expenses of the Committee (including such travelling expenses to members of the Committee as the Committee may determine) shall be paid out of the funds at the disposal of the Committee.

(6) Seven members of the Statutory Committee shall constitute a quorum.

The Statutory Committee may appoint sub-committees consisting either wholly or partly of members of the Statutory Committee, and may delegate to such sub-committees, with or without any restrictions or conditions as they think fit, any of their powers and duties under this Act.

Subject to the foregoing provisions of this subsection, the Committee shall regulate their own procedure.

(7) The term of office of a member of the Statutory Committee shall be three years; but a retiring member shall be eligible for re-appointment.

Provided that if a member required to be appointed from amongst the members of the Corporation ceases for two months to be a member of the Corporation otherwise than as a member of the Statutory Committee he shall at the end of that period vacate his office as member of the Statutory Committee, and that a person appointed to fill a casual vacancy shall continue in office so long only as the person in whose place he was appointed would have continued in office.

(8) The Statutory Committee may, with the consent of the Treasury, appoint and employ a secretary, assistant secretaries, and such other clerks and servants as they may require, and may pay out of funds at their disposal to such secretary, assistant secretaries, clerks and servants, such salaries or remuneration as they, with the consent of the Treasury, may determine, and may with like consent establish a scheme of pensions for persons in their permanent employment or grant pensions to such persons on retirement.

2. *Establishment of local committees.*—(1) For the purpose of assisting the Statutory Committee in the execution of their duties, a local committee shall be established for every county and county borough, and for every borough or urban district having a population of not less than fifty thousand the council of which so desires, and for any other borough or urban district for which the Statutory Committee, on the application of the council thereof, considers it desirable that, having regard to the special circumstances of the case, a separate local committee should be established.

(2) The constitution of a local committee shall be such as may be determined by a scheme framed by the council of the county or borough or urban district and approved by the Statutory Committee; so, however, that every such scheme shall provide—

(a) for the appointment by the council of the county or borough or urban district of at least a majority of the local committee; but the members so appointed by the council need not be members of the council; and

(b) for the appointment by the local committee from amongst their own number of a chairman; and

(c) for the inclusion of women and representatives of labour amongst the members of the local committee.

(3) If within such time, not being less than one month, as may be allowed by the Statutory Committee, the council does not frame a scheme or such a scheme as the Statutory Committee approve, the Statutory Committee may themselves frame a scheme which shall have a like effect as if it were framed by the council and approved by the Statutory Committee.

(4) The scheme, in the case of a county, may provide for the division of the county into districts and the appointment of a sub-committee for each such district, which sub-committees are herein-

after referred to as district committees, so, however, that every borough and urban district within the county having a population of not less than twenty thousand, and in the case of the county of London, the city of London and each metropolitan borough, shall be a separate district, and that the council thereof shall have the right of appointing at least a majority of the members of the district committee, and in the appointment of every such district committee some of the members appointed shall be women.

Such a district committee may, but need not, contain any members of the local committee.

(5) A scheme regulating the constitution of any such local committee or district committee as aforesaid shall provide for the substantial representation on the local or district committee of persons who have within the area either as members of the Soldiers and Sailors Families Association, or the Soldiers and Sailors Help Society, or otherwise, been performing functions similar to those to be performed by local committees under this Act.

(6) For facilitating the preparation of such schemes as aforesaid the Statutory Committee shall as soon as practicable prepare and issue forms of model schemes.

(7) A local committee or district committee may also appoint sub-committees, either for any special purposes or for any special parts of their area, and any such committee may consist either wholly or partly of members of the local or district committee, and in particular may appoint a special committee which shall include representatives of employers and of labour for the care of disabled officers and men.

(8) Any two or more local committees may combine together for the joint exercise of any of their powers and duties under this Act, and may for that purpose appoint a joint committee, and may agree as to the proportions in which the several local committees represented on the joint committee are to contribute towards the expenses of such joint committee.

(9) A local committee may delegate to any district committee and a local committee or district committee may delegate to any sub-committee, whether appointed for any particular locality or not, any of its powers and duties under this Act, whether with or without any restrictions or conditions as it may think fit.

(10) Any expenses of a local committee (except so far as they may be paid by the Statutory Committee) shall be paid out of funds at the disposal of the local committee.

(11) In the application of this section to Scotland "county borough" means a royal, parliamentary, or police burgh with a population of not less than fifty thousand, and "borough" or "urban district" means a royal, parliamentary, or police burgh.

**3. Functions of Statutory Committee.]—**(1) The functions of the Statutory Committee shall be—

(a) to decide any question of fact on the determination of which the amount of a pension or grant payable out of public funds to a dependant, other than a widow or child, may depend;

(b) to frame regulations for supplementary grants in cases where, owing to the exceptional circumstances of the case, the pension or grant or separation allowance payable out of public funds seems to the Committee to be inadequate;

(c) out of funds at their disposal, to supplement pensions and grants and separation allowances payable out of public funds, so, however, that no such supplementary grant shall be made except in accordance with such regulations as aforesaid;

(d) out of funds at their disposal, to make grants or allowances in cases where no separation allowances or pensions are payable out of public funds;

(e) out of funds at their disposal, to make advances on account of pensions or grants or separation allowances due to any persons out of public funds during any interval before the payment thereof actually commences, or during which the payment thereof has been accidentally interrupted;

(f) to decide, in any particular case, whether, as respects a wife, widow, child, or other dependant, any pension or grant or separation allowance and, as respects an officer or man, any supplementary grant has, under the regulations subject to which it was granted, become forfeited;

(g) to decide, as between two or more claimants to any pension or grant or separation allowance, which, if any, of the claimants is entitled thereto;

(h) to determine any other questions in relation to pensions or grants or separation allowances which may be referred to the Committee by the Admiralty or Army Council;

(i) to administer any funds which may be placed at the disposal of the Committee by the Corporation or by local committees or by any society or other organisation having funds applicable to the making of grants of the nature of those which the Committee are authorised to make, or otherwise;

(j) to make provision for the care of disabled officers and men after they have left the service, including provision for their health, training, and employment;

(k) to make grants in special cases for the purpose of enabling widows, children, and other dependants of deceased officers and men to obtain training and employment.

(2) The Statutory Committee may refer to any local committee for their consideration and advice any question pending before the Statutory Committee, and may request any local committee to collect

and furnish them with any information they may require with respect to any matter, and may delegate to any local committee the distribution within their area of any grants made by the Statutory Committee, and may pay or contribute towards the payment of the expenses incurred by the local committee in respect of any of the matters aforesaid.

(3) For the purpose of making provision for the care of disabled officers and men, the Statutory Committee shall appoint a special sub-committee which shall include representatives of employers and of labour.

(4) Paragraphs (8), (9), (10), and (11), of the First Schedule to the Patriotic Fund Reorganisation Act, 1903 (relating to funds, accounts and audit) shall apply in respect of the Statutory Committee in like manner as they apply in respect of the Corporation.

(5) The Statutory Committee shall in each year make a report of their proceedings to His Majesty.

(6) Pending the appointment of a local committee or sub-committee for any area, the Statutory Committee may make arrangements with any organisation for the performance within that area by the organisation of the functions of the local committee mentioned in paragraphs (a), (b), and (c) of section four of this Act.

(7) For the purpose of enabling the Statutory Committee to discharge their functions the Admiralty and the Army Council shall on request supply the Statutory Committee with such particulars as they may require with regard to any payments made by them to any officer, sailor, marine, soldier, widow, child, or dependant, and the Statutory Committee may on request duly communicate all such and similar information to any charitable body legitimately interested in the case of any officer, sailor, marine, soldier, widow, child, or dependant.

**4. Functions of local committees.]—**The functions of local committees shall be—

(a) to inquire into any case referred to them by the Statutory Committee, and to report to the Statutory Committee their advice and recommendations with respect thereto;

(b) to collect and furnish to the Statutory Committee such information as may be required by the Statutory Committee with respect to any matter, and to furnish applicants for pensions or grants or separation allowances with information and advice, especially in the event of payment being unduly delayed;

(c) to distribute any supplementary grants made by the Statutory Committee, the distribution of which has been delegated to the local committee;

(d) out of any funds at their disposal for the purpose, to make contributions towards the funds administered by the Statutory Committee, to increase pensions, grants, and separation allowances and to make grants or allowances where no pensions, grants, or separation allowances are otherwise payable;

(e) out of funds at their disposal, to make advances on account of pensions or grants or separation allowances due to any persons out of public funds during any interval before the payment thereof actually commences, or during which the payment thereof has been accidentally interrupted;

(f) to make provision, subject to the approval of the Statutory Committee, for the care of disabled officers and men after they have left the service, including provision for their health, training, and employment;

(g) to solicit and receive from the public contributions towards any such purposes as aforesaid.

**5. Summary penalty for false declaration.]—**If any person, with a view to obtaining any such pension or grant or allowance as aforesaid, makes or uses, or has before the passing of this Act made or used, any declaration, application, or other written statement knowing the same to be false, he shall be guilty of an offence, and shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds, and for the purpose of proceedings in respect of any such offence the offence shall be deemed to have been committed either at the place where it was actually committed or at the place where the offender may happen to be, and any declaration on an appropriate official form bearing a stamp purporting to be the office stamp of the Admiralty or Army Council, or any sub-department thereof, with a date subsequent to that on which the declaration purports to have been signed, shall be evidence that the declaration has been used with such view as aforesaid unless the contrary is proved.

**6. Provisions as to Corporation.]—**(1) Any lord mayor or mayor, lord provost or provost, who is as such a member of the Corporation may, if he is unable or unwilling to act as a member thereof, appoint some other person in his place to be a member of the Corporation; and any person so appointed shall hold office so long as the person by whom he is appointed holds his office as lord mayor, mayor, lord provost or provost.

(2) In addition to the persons whom the general council of the Corporation may co-opt under the Patriotic Fund (Reorganisation) Act, 1903, the council may co-opt as members thereof any number (not exceeding thirteen) of persons having special experience in work of the character to be performed by the Corporation; but in exercising this power of co-option the council shall include some women as well as men amongst the members so co-opted.

(3) Every member of the Statutory Committee appointed under this Act shall, by virtue of his office as member of that Committee, be



a member of the Corporation; but shall not as such be entitled to act or vote in respect of any question arising before the Corporation as regards matters dealt with by the Corporation independently of this Act.

(4) The purposes of this Act shall be included amongst the purposes for which the Corporation may solicit and receive contributions from the public and donations of property.

(5) Save as otherwise expressly provided, nothing in this Act shall affect the constitution or powers and duties of the Corporation.

7. *Short title.*—This Act may be cited as the Naval and Military War Pensions, &c., Act, 1915.

## CHAPTER 84.

### CLUBS (TEMPORARY PROVISIONS) ACT, 1915.

An Act to amend the Law with respect to Clubs during the continuance of the present war. [10th November, 1915.]

Be it enacted, &c.:—

1. *Power to order clubs to be closed during specified hours.*—(1) The Secretary of State may, by order, direct that all clubs (whether or not intoxicating liquor is supplied therein) within any such area as may be specified in the order shall be closed during such hours as may be so specified (commencing at an hour not earlier than that at which premises, licensed for the sale of intoxicating liquors by retail situate in the same place as such clubs, are for the time being required to be closed and ending at an hour not later than six o'clock in the morning):

Provided that the local authority for the purpose of this Act may grant a licence exempting from the provisions of the order, either absolutely or subject to such conditions or limitations as may be specified in the licence:—

(a) any club on any special occasion;

(b) any club where it is proved that, owing to the nature and hours of employment of members thereof, or for any other special reason, it is expedient that the club should be so exempted.

(2) If any club is kept open or the club premises or any part thereof are used in contravention of any such order, or, in cases where such a licence as aforesaid has been granted, in contravention of any condition of the licence, the club shall be liable to be declared an illegal club, and—

(a) the occupier of the premises and any person having control of the club, and the secretary or other principal officer of the club shall each be liable on summary conviction to imprisonment with or without hard labour for a term not exceeding three months, unless he proves that the contravention was committed without his knowledge or consent, and the court may in addition by order prohibit him from taking part or assisting in the management of or being interested in any club; and

(b) any other person proved to have been on the club premises in contravention of the order or the conditions of the licence shall be liable on summary conviction to a fine not exceeding five pounds, unless he proves that he resided on the club premises or that he was not a member or a guest of a member of the club.

(3) If any person so prohibited as aforesaid takes part or assists in the management of or is interested in a club, the club shall be liable to be declared an illegal club.

2. *Prohibition against use of clubs by prostitutes and gamblers.*—If any person having control of a club knowingly permits it to be used as an habitual resort or place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution, or of persons who have been convicted of offences under the enactments relating to gaming or betting or gaming or betting houses, he shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for a term not exceeding three months.

3. *Inspection of clubs.*—(1) With a view to securing the observance of this Act all clubs within the area specified in any order made by the Secretary of State under this Act may be inspected by any officer of police not below the rank of inspector, and, in the case of clubs which there is reason to believe are frequented by members of any of His Majesty's forces, by any person authorised for the purpose by the competent naval or military authority under the Defence of the Realm (Consolidation) Regulations, 1914, and for that purpose any such officer or person shall at all times, whether by day or night, have a right to enter, if need be by force, any premises within the area which he has reason to suspect are being used as a club, and to examine, search, and inspect the same, or any part thereof, and if he has reason to suspect that an offence against this Act has been or is being committed thereon, or that the club is otherwise being carried on contrary to law, may take the names and addresses of all persons found therein, and may seize any books and papers relating to the business of the club.

(2) If the officer of police or other person making the inspection has reasonable ground to suppose that any name or address given to him is false, he may require evidence of the correctness of the name and address, and may, if the person fails upon demand to give his name or address or the required evidence, apprehend him without warrant, and take him, as soon as practicable, before a justice of the

peace, and if any person required under this section to give his name and address fails to give the same or gives a false name or address, or gives false evidence with respect to the name and address, he shall be liable on summary conviction in respect of each offence to a fine not exceeding five pounds.

(3) If any person obstructs or delays any such officer of police or person in the execution of his duties under this section, he shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment, with or without hard labour, for a term not exceeding three months, and if the entry of any such officer or person to any premises is delayed by locked doors or other obstruction, the club shall be liable to be declared an illegal club, unless it is proved that there was good reason for locking the doors or such other obstruction.

(4) Where any police officer or person duly authorised by the competent naval or military authority has, in pursuance of the powers conferred by this Act, entered any premises which are or which he has reason to suspect are being used as a club, and it appears to the officer or person that the premises are being used for the purposes of unlawful gaming, the officer or person may exercise all such powers as are conferred by the provisions of the Gaming Act, 1845 [8 & 9 Vict. c. 109], or section forty-eight of the Metropolitan Police Act, 1839 [2 & 3 Vict. c. 47], or section thirty-two of the City Police Act, 1839 [2 & 3 Vict. c. xciv.], on an officer of police who has entered premises in pursuance of an authority or warrant granted thereunder by the Commissioner of Police for the metropolis, or the Commissioner of City Police, or a justice.

4. *Power to close illegal clubs.*—(1) If on complaint in writing it appears to a court of summary jurisdiction that a club is liable to be declared an illegal club within the meaning of this Act, the court may make an order declaring the club to be an illegal club and directing that the club shall be closed, and that the premises occupied by the club shall not be used for the purposes of any club during the continuance of the present war or any other period specified in the order, so, however, that if the period so specified extends beyond the duration of the war the order shall cease to have effect on the termination of the war.

(2) If the court grants a summons on the complaint, the summons shall be served on the secretary (if any) of the club, and on such other person (if any) as the court may direct.

(3) Any person aggrieved by an order under this section may appeal to quarter sessions.

5. *Provisions as to registration of new clubs.*—(1) Where during the continuance of the present war an application is made under the Licensing (Consolidation) Act, 1910 [10 Edw. 7 & 1 Geo. 5. c. 24.], to register a new club under that Act, the clerk to whom the application is sent before registering the club shall send to the chief officer of police for the district a copy of the particulars required to be registered, and if, within fourteen days from the date when such copy is so sent, the chief officer of police sends to the clerk notice that he objects to the registration of the club on the ground of the character or antecedents of the secretary or of any promoter or any person taking part in the management of the club, the clerk shall give notice of the objection to the applicant and shall not register the club.

(2) Where the registration of a club has been so objected to, the applicant for registration may, by complaint in writing made within fourteen days of the time when he receives notice of the objection, appeal against the objection to a court for which the clerk to whom the application was sent acts, and the court, if satisfied that the objection taken by the chief officer of police ought not to be sustained, may authorise the registration of the club.

(3) During the continuance of the present war there shall be included amongst the particulars required to be registered in connection with a new club under the Licensing (Consolidation) Act, 1910, the names and addresses of the promoters of the club, the proprietor (if any), and the persons taking part in the management of the club; and if any change takes place in the names and addresses of such persons as aforesaid, the secretary of the club shall forthwith communicate the change to the clerk by whom the particulars are registered, who shall make the necessary entry in the register, and failure to communicate such changes shall be a ground on which the club may be struck off the register.

(4) The persons whose names are for the time being registered as secretary, proprietor, promoters, or managers of the club shall be presumed to be such unless the contrary is proved.

6. *Interpretation.*—For the purposes of this Act—

The local authority shall be—

(a) in the Metropolitan Police District, the Commissioner of Police for the metropolis;

(b) in the City of London, the Commissioner of City Police;

(c) in any other place, a petty sessional court;

The expression "chief officer of police" means as respects the City of London the Commissioner of City Police and elsewhere has the same meaning as in the Police Act, 1890 [53 & 54 Vict. c. 45].

The proprietor, the manager, every member of the managing body (if any), and every other person who acts or assists in the management of a club, shall be deemed to be a person having control of the club:

The expression "secretary" in relation to a club has the same meaning as in the Licensing (Consolidation) Act, 1910.

**7. Short title and duration.**—(1) This Act may be cited as the Clubs (Temporary Provisions) Act, 1915.

(2) This Act shall not extend to Scotland or Ireland.

(3) This Act shall remain in force during the continuance of the present war and no longer, but the expiration of this Act and of any order thereunder shall not prejudice or affect the institution or prosecution of any proceedings for any offence committed before such expiration.

### CHAPTER 85.

#### PATENTS AND DESIGNS ACT (PARTIAL SUSPENSION) ACT, 1915.

An Act to suspend the operation of section twenty-seven of the Patents and Designs Act, 1907, during the continuance of the present war, and for a period of six months thereafter. [23rd November, 1915.]

Be it enacted, &c. :—

**1. Suspension of 7 Edw. 7, c. 29, s. 27.**—The operation of section twenty-seven of the Patents and Designs Act, 1907, shall be suspended during the continuance of the present war, and for a period of six months thereafter, and in reckoning the period of four years mentioned in the said section the period during which that section is suspended by virtue of this Act shall not be taken into account.

**2. Short title.**—This Act may be cited as the Patents and Designs Act (Partial Suspension) Act, 1915.

### CHAPTER 86.

#### APPROPRIATION (NO. 2) ACT, 1915.

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March, one thousand nine hundred and sixteen, and to appropriate the Supplies granted in this Session of Parliament. [23rd November, 1915.]

### CHAPTER 87.

#### INDIAN CIVIL SERVICE (TEMPORARY PROVISIONS) ACT, 1915.

An Act to enable Persons during the continuance of the War, and for a period of two years thereafter, to be appointed or admitted to the Indian Civil Service without examination. [23rd December, 1915.]

### CHAPTER 88.

#### STREET COLLECTIONS REGULATION (SCOTLAND) ACT, 1915.

An Act to provide for the Regulation of Street Collections in Burghs in Scotland. [23rd December, 1915.]

### CHAPTER 89.

#### FINANCE (NO. 2) ACT, 1915.

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connexion with Finance. [23rd December, 1915.]

Be it enacted, &c. :—

#### PART I.

##### CUSTOMS AND EXCISE.

**1. Increased duty on tea.**—In lieu of the duty of Customs payable on tea imported into Great Britain or Ireland there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid the following duty (that is to say) :—

Tea, the pound ... .. one shilling.

**2. Additional duties on cocoa.**—In addition to the duties of Customs payable on cocoa imported into Great Britain or Ireland there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid the following additional duties, that is to say :—

	£	s.	d.
Cocoa, the lb. ... ..	0	0	0½
Cocoa husks and shells, the cwt. ... ..	0	1	0
Cocoa butter, the lb. ... ..	0	0	0½

**3. Additional duties on coffee.**—In addition to the duties of Customs payable on coffee imported into Great Britain or Ireland there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid the following additional duties, that is to say :—

	£	s.	d.
Coffee (not kiln-dried, roasted or ground) the cwt. ... ..	0	7	0
Coffee (kiln-dried, roasted or ground) the lb. ... ..	0	0	1

**4. Additional duties on chicory.**—(1) In addition to the duties of Customs payable on chicory imported into Great Britain or Ireland there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen,

be charged, levied, and paid the following additional duties, that is to say :—

	£	s.	d.
Chicory, raw or kiln-dried, the cwt. ... ..	0	6	7
Chicory, roasted or ground, the lb. ... ..	0	0	1

(2) In addition to the duty of Excise payable on chicory there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid the following additional duty, that is to say :—

	£	s.	d.
Chicory, raw or kiln-dried, the cwt. ... ..	0	6	7

and so in proportion for any less quantity.

**5. Additional Excise duty on coffee substitutes, &c.**—In addition to the duty of Excise payable on any article or substance prepared or manufactured for the purpose of being in imitation of, or in any respect to resemble, or to serve as a substitute for coffee or chicory, and on any mixture of any such article or substance with coffee or chicory, there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid the following additional duty, that is to say :—

	£	s.	d.
For every quarter of a pound of any such article, substance, or mixture which is sold or kept for sale in the United Kingdom ... ..	0	0	0½

**6. Increased Customs duties on sugar, &c.**—In lieu of the present Customs duties, drawbacks and allowance in respect of sugar, molasses, glucose and saccharin, there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid the duties specified in the first column of the table set out in Part I. of the First Schedule to this Act, and there shall be paid and allowed the drawbacks and allowance set out in Part II. of that Schedule.

This provision shall not affect the continuance after the first day of August, nineteen hundred and sixteen, of the duties, drawbacks, and allowance existing before the twenty-second day of September, nineteen hundred and fifteen.

**7. Excise duties on sugar, &c.**—(1) There shall, as from the twenty-second day of September, nineteen hundred and sixteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid in respect of sugar, molasses, glucose, and saccharin made in Great Britain or Ireland the Excise duties specified in the second column of the table set out in Part I. of the First Schedule to this Act, and on a licence to be taken out annually by a manufacturer of sugar an Excise duty of one pound.

(2) There shall be paid and allowed in respect of the Excise duties under this section the drawbacks and allowance set out in Part II. of the First Schedule to this Act; and the provisions contained in Part III. of that Schedule shall have effect in respect of the duties under this section.

(3) The Excise duties charged by this section on glucose and saccharin shall be deemed to be in lieu of the Excise duties chargeable before the twenty-second day of September, nineteen hundred and fifteen, on those articles, but this section shall not affect the continuance after the first day of August, nineteen hundred and sixteen, of the duties and drawbacks existing before the twenty-second day of September, nineteen hundred and fifteen, in respect of glucose and saccharin.

**8. Additional duties on dried fruit.**—(1) In addition to the duties of Customs payable on dried or preserved fruits imported into Great Britain or Ireland there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid the following additional duties, that is to say :—

	£	s.	d.
Figs and fig cake, plums (commonly called French plums and prunelloes), prunes, all other dried or preserved plums, and raisins, the cwt. ... ..	0	3	6

(2) Nothing in this section shall render any article liable to duty which was not liable to duty before the twenty-second day of September, nineteen hundred and fifteen.

**9. Additional duties on tobacco.**—(1) In addition to the duties of Customs payable on tobacco imported into Great Britain or Ireland there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid the additional duties specified in Part I. of the Second Schedule to this Act.

(2) In addition to the duties of Excise payable on tobacco grown in Great Britain or Ireland there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid the additional duties specified in Part II. of the Second Schedule to this Act.

(3) Sub-section (3) of section eighty-three of the Finance (1909-10) Act, 1910 [10 Edw. 7 & 1 Geo. 5, c. 8], and any other enactment relating to drawback on tobacco shall have effect as if the rates set out in Part III. of the Second Schedule to this Act were substituted for the rates set out in Part III. of the Fourth Schedule to the Finance (1909-10) Act, 1910, in cases where it is shown that the additional duty under this section has been paid.



**10. Additional duty on motor spirit.**—(1) In addition to the duty of Customs payable on motor spirit imported into Great Britain or Ireland there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid an additional duty at the rate of threepence per gallon.

(2) In addition to the duty of Excise payable on motor spirit made in Great Britain or Ireland there shall, as from the twenty-second day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid an additional duty at the rate of threepence per gallon.

(3) The like allowances and repayments shall be allowed and made in respect of the additional duties under this section as are allowed and made in respect of the duties payable under section eighty-four of the Finance (1909-10) Act, 1910.

**11. Additional medicine duties.**—(1) In addition to the duties of Excise payable under the Medicines Stamp Act, 1802 [42 Geo. 3, c. 56], the Stamp Act, 1804 [44 Geo. 3, c. 98], and the Medicines Stamp Act, 1812 [52 Geo. 3, c. 150], and any Act amending those Acts, there shall be charged, levied, and paid, as from the twentieth day of October, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, additional duties of an amount equal in each case to that payable under the said Acts.

(2) There shall be charged, levied, and paid in respect of any medicine liable to duty under the said Acts, and on which that duty has been paid before the twenty-first day of October, nineteen hundred and fifteen, on the first sale thereof on or after that date, an Excise duty of an amount equal to the amount of duty originally paid; and if any person sells any medicine liable to the duty payable under this provision without paying the duty, he shall be liable to an Excise penalty of twenty pounds.

**12. New import duties.**—(1) There shall, as from the twenty-ninth day of September, nineteen hundred and fifteen, until the first day of August, nineteen hundred and sixteen, be charged, levied, and paid on any of the following articles imported into Great Britain or Ireland the following duties of Customs (in this Act referred to as new import duties), namely:—

Motor cars, including motor bicycles and motor tricycles	...	...	...
Accessories and component parts of motor cars, motor bicycles, or motor tricycles other than tyres	...	...	...
Musical instruments, including gramophones, pianolas, and other similar instruments	...	...	...
Accessories and component parts of musical instruments, and records and other means of reproducing music	...	...	...
Clocks, watches, and the component parts of clocks and watches	...	...	...
Cinematograph films imported for the purpose of the exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus:—	...	...	...

An amount equal to thirty-three and one-third per cent. of the value of the article.

Per linear foot of the standard width of 1½ ins.  
£ s. d.

Blank film, on which no picture has been impressed, known as raw film or stock	...	...	...
Positives, i.e., films containing a picture and ready for exhibition	...	...	...
Negatives, i.e., films containing a photograph from which positives can be printed	...	...	...

(2) The value of any article for the purposes of this section shall be taken to be the price which an importer would give for the article if the article were delivered, freight and insurance paid, in bond at the port of importation, and duty shall be paid on that value as fixed by the Commissioners of Customs and Excise.

In the case of a motor car (including a motor bicycle and a motor tricycle) imported with tyres attached, the value of the tyres shall be deducted from the value of the car for the purpose of the charge of duty.

(3) Any dispute arising as to the proper rate of duty payable under this section shall, so far as any question of value is concerned, be referred to a referee appointed by the Treasury, and the decision of the referee shall be final and conclusive.

Sections thirty and thirty-one of the Customs Consolidation Act, 1876 [39 & 40 Vict. c. 36], shall, as respects any such dispute as to value, have effect as if an application for reference to a referee under this provision were substituted for the action or suit mentioned in that section.

(4) The procedure on any such reference shall be such as may be determined by rules made by the Treasury for the purpose.

If the decision of the referee involves any variation in the amount of duty payable, duty shall be paid or repaid, as the case may be, so as to correspond with that decision.

**13. Supplemental provisions as to new import duties.**—(1) If it is proved to the satisfaction of the Commissioners of Customs and Excise that a new import duty has been duly paid in respect of any article, and that the article has not been used in Great Britain or Ireland, a drawback equal to the amount of duty paid shall be allowed on that article if exported as merchandise.

(2) Section six of the Customs and Inland Revenue Act, 1879 [42 &

43 Vict. c. 21], shall not apply to articles liable to the new import duties, and any such articles re-imported into Great Britain or Ireland after exportation therefrom shall be exempt from duty if it is shown to the satisfaction of the Commissioners of Customs and Excise either that the articles had not been imported previously to exportation or that no drawback of duty was allowed on exportation or that any drawback so allowed has been repaid to the Exchequer.

Provided that articles which have been imported and exported by way of transit only under bond shall not be deemed to have been imported or exported for the purposes of this provision.

(3) Where it is proved to the satisfaction of the Commissioners of Customs and Excise that any article is of a kind mainly used as an accessory or a component part which is liable to a new import duty but is imported for use for some other purpose or has been and is being exclusively used for some other purpose, the Commissioners shall, subject to such conditions (if any) as they think fit to impose, allow the article to be imported free of duty, or repay any duty paid on importation, as the case requires.

(4) Motor cars which are proved to the satisfaction of the Commissioners of Customs and Excise to be constructed and adapted for use, and intended to be used solely, as motor omnibuses, or motor ambulances, or in connection with the conveyance of goods or burden in the course of trade or husbandry, or by a local authority as fire engines or otherwise for the purposes of their fire brigade service, and chassis, component parts, and accessories, which are so proved to be intended to be used solely for any such motor cars, shall not be charged with the new import duty.

Provided that in such cases as the Commissioners of Customs and Excise direct, cars, chassis, accessories, or parts, as the case may be, shall not be exempted unless they are marked or stamped in such manner as the Commissioners direct or approve with some distinctive stamp or mark showing that they are only to be so used.

On any transfer of a motor car or chassis which has been exempted under this provision, the transferor shall give notice of the transfer and of the name and address of the transferee to the Commissioners of Customs and Excise.

If, while the duty on motor cars, motor bicycles and motor tricycles, and accessories and component parts thereof under this Act remains in force, any person obliterates or removes any such distinctive stamp or mark, or uses any motor car, chassis, accessory, or part which has been exempted from duty under this provision for any purpose other than the purposes therein mentioned, or fails to give notice of a transfer in accordance with this provision, he shall be liable on summary conviction to a fine not exceeding one hundred pounds, or, at the option of the court, to imprisonment, with or without hard labour, for a term not exceeding six months.

If it is shown to the satisfaction of the Commissioners of Customs and Excise that any motor car, chassis, component part, or accessory has been, and is being, exclusively used for purposes which entitle it to an exemption from duty under this provision, the Commissioners may, subject to such conditions (if any) as they think fit to impose, repay any duty paid on the car, chassis, part or accessory on importation.

(5) The Treasury may by order exempt any articles mentioned in the order which are liable to any new import duty from that duty if they are satisfied that, having regard to the small value of the article, it is inexpedient that the duty should be charged.

(6) The Treasury may make regulations providing for the total or partial exemption for a limited period from the new import duty of any motor cars, including motor bicycles and motor tricycles, brought into Great Britain or Ireland by persons making only a temporary stay therein.

**14. Allowance and repayment of duty in respect of motor spirit used by veterinary surgeons.**—For the purpose of giving veterinary surgeons an allowance or repayment of half the amount of motor spirit duty, whether payable under section eighty-four of the Finance (1909-10) Act, 1910, or this Act, Part I. of the Fifth Schedule to the Finance (1909-10) Act, 1910, shall be read as if the following paragraph were added thereto, namely:—

"(5) To a motor car kept by a registered veterinary surgeon whilst it is being used by him for the purposes of his profession."

**15. Restriction of delivery of goods from bond.**—(1) During the continuance of the present war and for a period of twelve months thereafter, the Treasury may by order authorize the Commissioners of Customs and Excise, during any period named in the order not exceeding three months, to refuse to allow the delivery of goods or commodities for home use from ship's side or a warehouse on payment of duty in any cases where deliveries are demanded of amounts exceeding the deliveries which appear to the Commissioners to be reasonable deliveries in the circumstances.

(2) Any refusal of the Commissioners of Customs and Excise within one month before the twenty-first day of September, nineteen hundred and fifteen, to allow the delivery of goods or commodities is hereby confirmed, and shall be as valid as if an order of the Treasury had been in force under this section.

Where, by reason of the refusal of the Commissioners of Customs and Excise within the period aforesaid to allow the delivery of any goods any person has been prevented from performing any contract for the sale of, or otherwise in connection with, the goods in accordance with the terms thereof, that person shall be freed and discharged from all actions and proceedings under the contract for or in respect of his failure to perform the contract so far as due to the reason aforesaid.

16. *Increase of penalty for false declarations, &c.*—The penalty under section one hundred and sixty-eight of the Customs Consolidation Act, 1876 (which relates to the punishment for false declarations, &c.) shall be increased from one hundred pounds to five hundred pounds; and the court may, if it thinks fit, in lieu of ordering the offender under that section to pay the penalty, order him to be imprisoned with or without hard labour for a term not exceeding two years.

17. *Rate of reduction of licence duty where sale of liquor is curtailed.*—(1) The amount of the repayment to be made to the holder of a retailer's on-licence in cases to which subsection (1) of section nine of the Finance Act, 1914 (Session 2) [5 & 6 Geo. 5, c. 7] (which provides for a reduction of licence duty where the sale of liquor is curtailed), as extended by section six of the Finance Act, 1915 [5 & 6 Geo. 5, c. 62], applies, shall in all cases be one-fourth part of the whole duty payable by the licence holder in respect of his licence:

Provided that when the suspension in respect of which the repayment is made ceases owing to the expiration of the Act under which the suspension has been imposed, or owing to the cessation of the war, during the currency of the year for which the licence is in force, the repayment to be made for the year shall be such proportion of one-fourth of the whole duty as the expired part of the year bears to the whole year.

(2) Where in any year the hours of sale of intoxicating liquor have been restricted in any area by an order made by the Central Control Board (Liquor Traffic) by virtue of regulations made in pursuance of the Defence of the Realm (Amendment) (No. 3) Act, 1915 [5 & 6 Geo. 5, c. 42], the holder of a retailer's off-licence for premises within the area shall be entitled to the same repayment in respect of his licence duty as that to which the holder of a retailer's on-licence is entitled under subsection (1) of section nine of the Finance Act, 1914 (Session 2), as amended by this section.

(3) The holder of a retailer's on-licence in Scotland shall not be entitled to the rebate of two-fifths of his licence duty under subsection (2) of section nine of the Finance Act, 1914 (Session 2), as well as to the repayment of one-fourth part of his licence duty under this section; but nothing shall prevent the allowance of the rebate of two-fifths of his duty, after any repayment under this section ceases owing to the discontinuance of the suspension in respect of which that repayment is given.

18. *Repeal of s. 2 of 2 & 3 Geo. 5, c. 8.*—Section two of the Finance Act, 1912 (which relates to the distribution of payments on account of liquor licence duties in certain cases), shall cease to have effect and is hereby repealed, without prejudice to the validity of any payments made in pursuance of that section before the passing of this Act.

19. *New tables for ascertaining weight and strength of spirits.*—

(1) The revised and extended table, an original copy of which, marked Table I. (Spirits), has been signed by the Chairman of the Commissioners of Customs and Excise, and deposited in the office of the King's Remembrancer at the Royal Courts of Justice, shall be substituted, as the table to be used by Officers of Customs and Excise for the purpose of ascertaining the strength of spirits by means of Sikes's hydrometer, for the table of the Strengths of Spirits denoted by the said hydrometer which is required to be used for the purpose by the Spirits (Strength Ascertainment) Act, 1818 [58 Geo. 3, c. 28].

(2) Where by reason of the high temperature or strength of spirits the strength of the spirits cannot be ascertained by means of Sikes's hydrometer, the strength may be ascertained by means of a supplemental hydrometer (to be called Sikes's A. Hydrometer), a specimen of which, marked by the Chairman of the Commissioners of Customs and Excise, has been deposited in the office of the King's Remembrancer at the Royal Courts of Justice, and by means of the use of the supplemental table applicable to that hydrometer, an original copy of which, marked Table II. (Spirits), has been signed by the Chairman of the Commissioners and deposited in the same office.

(3) Section one hundred and fourteen of the Spirits Act, 1880 [43 & 44 Vict. c. 24] (which relates to the ascertainment by weighing of the quantity of spirits), shall be construed as if for a reference to the Table therein mentioned there were substituted a reference to the revised Tables, an original copy of which, marked Tables III. and IV., has been signed by the Chairman of the Commissioners of Customs and Excise and deposited in the Office of the King's Remembrancer at the Royal Courts of Justice, and as if any reference to casks included a reference to other receptacles.

## PART II. INCOME TAX.

20. *Increase of income tax.*—(1) In order, as far as may be, to provide for the collection of income tax for the last six months of the current income tax year at rates exceeding by forty per cent. the rates at which it is charged under the Finance Act, 1915, the following provisions shall have effect:—

(a) The amount payable in respect of any assessment already made of income tax chargeable otherwise than by way of deduction shall be treated as increased by twenty per cent., and any authority to collect the tax, and remedy for non-payment of the tax, shall apply accordingly; and

(b) An assessment of any such income tax not already made shall be made for an amount exceeding by twenty per cent. that for which it would have been made if this Act had not passed; and

(c) Such deductions shall be made in accordance with regulations prescribed by the Commissioners of Inland Revenue in the case of

dividends, interest, or other annual sums (including rent) due or payable after the fifth day of October, nineteen hundred and fifteen, as will make the total amount deducted in respect of income tax for the year equal to that which would have been deducted if income tax for the year had been at the rate of three shillings; and

(d) Subsection (1) of section fourteen of the Revenue Act, 1911 [1 & 2 Geo. 5, c. 2], shall apply in cases where no further payment in respect of dividends, interest, or other annual sums is made after the fifth day of October nineteen hundred and fifteen and before the sixth day of April nineteen hundred and sixteen as if this Act were the Act imposing income tax for the year, and as if three shillings were the rate ultimately charged for the year;

(e) Where the amount of any exemption, relief, or abatement under the Income Tax Acts is to be determined by reference to the amount of income tax on any sum, the amount of the tax shall be calculated at three shillings, with a proportionate reduction where relief is granted under section six of the Finance Act, 1914 [4 & 5 Geo. 5, c. 10], as amended by section ten of the Finance Act, 1915; and where income tax is payable in respect of a part only of a year, the tax shall be deemed to be at the rate of three shillings.

(2) If any individual who has been assessed or charged to income tax claims and proves in manner provided by the Income Tax Acts that his actual income from all sources is less by more than ten per cent. than the income on which he has been so assessed or charged, he shall be entitled to repayment of any additional tax paid by him owing to the increase in the rate of tax effected by this section in accordance with the table set out in the Third Schedule to this Act.

(3) For the purpose of the Provisional Collection of Taxes Act, 1913 [3 & 4 Geo. 5, c. 3], or of continuing income tax for any future income tax year, the rate of income tax for the current year shall be deemed to be three shillings and sixpence.

21. *Reduction of exemption and abatements.*—(1) The exemption granted under section one hundred and sixty-three of the Income Tax Act, 1842 [5 & 6 Vict. c. 35], as extended by section thirty-four of the Finance Act, 1894 [57 & 58 Vict. c. 30], to persons whose respective incomes do not exceed one hundred and sixty pounds a year shall be restricted so as to apply only to persons whose respective incomes do not exceed one hundred and thirty pounds a year.

(2) The relief from income tax allowed under section thirty-four of the Finance Act, 1894, to persons whose respective incomes do not exceed five hundred pounds and under section eight of the Finance Act, 1898 [61 & 62 Vict. c. 10], to individuals whose incomes do not exceed seven hundred pounds shall be reduced so as to be—

(a) in the case of persons whose incomes do not exceed four hundred pounds, the tax upon one hundred and twenty pounds; and

(b) in the case of persons whose incomes exceed four hundred pounds and do not exceed five hundred pounds, the tax upon one hundred pounds; and

(c) in the case of individuals whose incomes exceed five hundred pounds and do not exceed six hundred pounds, the tax upon one hundred pounds.

(3) Where relief for the current income tax year under either of the said sections has, before the commencement of this Act, been given by reduction of the assessment, the assessment shall, without further notice or authority, be treated as varied in such a manner as to give effect to the amendments made by this section.

(4) One hundred and thirty pounds shall be substituted for one hundred and sixty pounds in section thirty-six of the Finance Act, 1894 (which relates to depositors in savings banks) and in section sixty-eight of the Finance (1909-10) Act, 1910 (which relates to relief from income tax with respect to children); and any reference in any enactment to section thirty-four of the Finance Act, 1894, or to section eight of the Finance Act, 1898, shall be deemed to be a reference to that section as amended by this Act.

(5) Section twelve of the Finance Act, 1898 (which grants an exemption from land tax in the case of certain persons who have been allowed a total exemption from income tax by reason of their income not exceeding one hundred and sixty pounds), shall have effect as though the words, "relief from income tax," were substituted for the words, "a total exemption from income tax."

22. *Charge of Schedule B. tax.*—(1) Sections twenty-six and twenty-seven of the Finance Act, 1896 [59 & 60 Vict. c. 23], shall, as respects income tax under Schedule B., have effect as if references to one-third of the annual value were references to the annual value.

(2) The annual value in Ireland for the purpose of income tax under Schedule B. shall be taken to be—

(a) the judicial rent fixed under the Land Law (Ireland) Acts or any of them; or

(b) the annual interest payable to the Irish Land Commission in lieu of rent under the Land Purchase (Ireland) Acts or any of them; or

(c) the purchase annuity payable under the Land Purchase (Ireland) Acts or any of them;

in any case in which it is shown that the judicial rent, the annual interest in lieu of rent, or the purchase annuity, as the case may be, is less than the Poor Law valuation.

(3) The election of a person occupying lands for the purposes of husbandry to be assessed under Schedule D. may, in the current income tax year, be signified as provided by section eighteen of the Customs and



Inland Revenue Act, 1887 [50 & 51 Vict. c. 15], at any time before the seventh day of February nineteen hundred and sixteen.

(4) Any person occupying woodlands, who proves to the satisfaction of the general Commissioners that those woodlands are managed by him on a commercial basis and with a view to the realisation of profits, may elect to be charged to income tax in respect of those woodlands under Schedule D. instead of under Schedule B. in the same manner as a person occupying lands for the purpose of husbandry only, and section eighteen of the Customs and Inland Revenue Act, 1887, shall apply accordingly, subject as follows:—

(a) Any such election shall extend to all woodlands so managed on the same estate; and

(b) The election shall have effect, not only as respects the year of assessment mentioned in that section, but also as respects all future years of assessment so long as the woodlands are occupied by the person making the election.

**23. Extension of scale of super-tax.**—Section three of the Finance Act, 1914, as amended by section ten of the Finance Act, 1915 (which contains the rates of super-tax), shall have effect as if the following items were substituted for the last item in subsection (1) thereof; namely—

for every pound of the next one thousand pounds of the excess, two shillings and tenpence.

for every pound of the next one thousand pounds of the excess, three shillings and twopence.

for every pound of the remainder of the excess, three shillings and sixpence.

**24. Extension of relief in respect of children.**—Section seven of the Finance Act, 1914 (which extends the relief from income tax given in respect of children), shall have effect as if twenty-five pounds were substituted for twenty pounds.

**25. Power for soldiers and sailors to claim pre-war rates of income tax in certain cases.**—(1) Where any person who, during the current income tax year, has served or is serving as a member of any of the naval or military forces of the Crown, or in service of a naval or military character in connection with the present war for which payment is made out of money provided by Parliament, or in any work abroad of the British Red Cross Society or the St. John Ambulance Association, or any other body with similar objects, proves that his total income from all sources does not exceed three hundred pounds, and that he is assessed or charged to income tax, or has paid income tax either by way of deduction or otherwise on his pay in connection with any such service, he shall be entitled to claim such relief from income tax as will reduce the amount of income tax on that pay to the amount which would have been payable at the rate in force immediately before the commencement of the present war.

(2) The relief given under this section shall be in addition to and not in derogation of any exemption or other relief or abatement under the Income Tax Acts and shall not be subject to the reduction of exemption and abatements for which provision is made under this Act; but relief in respect of earned income shall be given in respect of the pay by reference to the rate in force immediately before the commencement of the present war; and, in calculating any earned income on which relief is to be given, any deductions from earned income made under subsection (2) of section nineteen of the Finance Act, 1907 [7 Edw. 7, c. 13], shall be made primarily from the pay.

(3) All the provisions of the Income Tax Acts which relate to claims for exemption or relief, or the proof to be given with respect to those claims, shall apply to claims for relief under this section and the proof to be given with respect to those claims.

**26. Relief in respect of premiums on policies.**—(1) In any income tax year to which this section applies, the whole amount of profits and gains by reference to which the limit of the relief granted in respect of the premiums on insurance policies under section fifty-four of the Income Tax Act, 1853 [16 & 17 Vict. c. 34], and any Act amending the same, is calculated shall be taken to be and to have been the whole amount of the profits and gains within the meaning of that section for the year ending the fifth day of April, nineteen hundred and fourteen, where that amount is or was greater than the amount of the profits and gains by reference to which the limit would be calculated but for this section.

(2) This section applies to the income tax year ended on the fifth day of April nineteen hundred and fifteen to the current income tax year, and to any future income tax year which includes any time during which the present war continues, and any amount which has been paid before the passing of this Act and would not have been paid if this section had been in force shall be repaid.

**27. Quarterly assessment and charge of employed persons.**—(1) Weekly wage earners to whom this section applies shall be assessed and charged to income tax in respect of their wages in each quarter of the year instead of in the whole year, and shall in all cases be assessed and charged in respect of the actual amount of their wages for that quarter, and as respects any such assessment and charge and the collection of the tax the Income Tax Acts shall have effect as if income tax were charged for each quarter instead of for the year.

(2) This section applies only to weekly wage earners employed by way of manual labour in respect of the wages arising from that employment, and does not apply to persons employed as clerks, typists, draftsmen, or in any other similar capacity:

The expression "weekly wage earner" means a person who receives

wages which are calculated by reference to the hour, day, week, or any period less than a month, at whatever intervals the wages may be paid, or who receives wages, however calculated, which are paid daily, weekly, or at any less intervals than a month:

If any question arises whether any person is a person to whom this section applies, that question shall be determined jointly by the Commissioners of Inland Revenue and the general Commissioners, and their determination shall be final and conclusive on the question.

(3) This section shall not have effect as respects the tax for the current income tax year.

**28. Supplemental provisions as to quarterly assessment.**—(1) Section twenty-one of the Finance Act, 1907, which relates to returns to be made by the employer, shall extend so as to apply to all weekly wage earners to whom the provisions of this Act as to quarterly assessment apply, and so as to enable returns to be required at such times and intervals as may be fixed by regulations made under this section.

Where an employer is a body corporate, including a company, that body corporate shall be liable to a penalty for failure to deliver a return in pursuance of section twenty-one of the Finance Act, 1907, as well as the secretary or other officer performing the duties of secretary of the body corporate.

(2) The assessment and charge of income tax in each quarter under this Act shall not affect the grant of any exemption, relief, or abatement which is dependent wholly or partially on total annual income; and any such exemption, relief, or abatement shall be given, in cases where the income tax is assessed and charged quarterly under this Act, as if the total wages on which the tax is charged and the total tax charged for the four quarters of the year were respectively the total income for the year from the wages and the total tax charged for the year in respect of the wages.

The Commissioners of Inland Revenue may, however, if they think fit in any case, in accordance with regulations made by them under this section, allow any such exemption, relief, or abatement by way of reduction of the quarterly assessment or repayment of the quarterly tax.

(3) The Commissioners of Inland Revenue may make regulations generally with respect to the assessment and collection of income tax under this Act in the case of weekly wage earners, and with respect to the procedure to be adopted for the purpose, and may in particular by those regulations in the case of those weekly wage earners provide for the assessment of the tax by the surveyor of taxes and for the collection of the tax by a collector appointed by them, and for the application to the tax of the rules and provisions applicable to Schedule E in cases where those rules and provisions are not otherwise applicable.

(4) The amount of any income tax assessed and charged quarterly under this Act shall, without prejudice to any other method of recovery under the Income Tax Acts, be also recoverable summarily as a civil debt.

(5) Nothing in this Part of this Act shall affect the right of appeal to the general Commissioners, and the general Commissioners may, if they think it necessary for the purpose of expediting the hearing of appeals, add to the number of general Commissioners by the co-optation or appointment of such persons for the purpose as they think fit.

The powers under this provision may be exercised notwithstanding any limitation under any Act of the number of the general Commissioners.

**29. Extension of time for claim of relief on account of earned income.**—Subsection (4) of section nineteen of the Finance Act, 1907 (which limits the time within which a claim for relief on account of earned income is to be made), shall cease to have effect.

**30. Income tax on securities representing a bank's subscription to war loan.**—Any bank carrying on a bona fide banking business in the United Kingdom shall be relieved, by repayment or otherwise, from income tax under Schedule C. in respect of the interest on any securities which the bank prove to the satisfaction of the special Commissioners to represent subscriptions by the bank to any Government loan issued for the purposes of the present war either before or after the passing of this Act, and the bank shall include the amount of any such interest in the computation of the balance of its profits and gains for the purpose of assessment under the first case of Schedule D.

**31. Provisions with respect to the charge of income tax on non-residents.**—(1) Section forty-one of the Income Tax Act, 1842 (which relates to the charge of income tax in special cases), shall, so far as it relates to the taxation of non-residents, be extended—

(a) so as to make non-resident persons chargeable to income tax in the name of any branch or manager as well as in the name of any factor, agent, or receiver; and

(b) so as to make non-resident persons so chargeable, although the branch, factor, agent, receiver, or manager may not have the receipt of the profits or gains of the non-resident.

(2) A non-resident person shall be chargeable in respect of any profits or gains arising, whether directly or indirectly, through or from any branch, factorship, agency, receivership, or management, and shall be so chargeable under section forty-one of the Income Tax Act, 1842, as amended by this section, in the name of the branch, factor, agent, receiver, or manager.

(3) Where a non-resident person not being a British subject or a British, Indian, Dominion, or Colonial Firm or Company, or branch thereof, carries on business with a resident person, and it appears to the Commissioners by whom the assessment is made that, owing to the close connection between the resident and the non-resident person, and to the substantial control exercised by the non-resident over the resident,

the course of business between those persons can be so arranged, and is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be chargeable to income tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(4) Where it appears to the Commissioners by whom the assessment is made or, on any objection or appeal, to the general or special Commissioners that the true amount of the profits or gains of any non-resident person chargeable in the name of a resident person with income tax cannot in any case be readily ascertained the Commissioners may, if they think fit, assess the non-resident person on a percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable, and in such case section fifty-three of the Income Tax Act, 1842, shall extend so as to require returns to be given of the business so done by the non-resident through or with the resident in the same manner as returns are to be given under that section of the profits or gains to be charged.

(5) The amount of percentage shall in each case be determined, having regard to the nature of the business, by the Commissioners by whom the assessment on the percentage basis is made, subject, in the case of an assessment made by the additional Commissioners, to objection or appeal to the general or special Commissioners.

If either the resident or non-resident person is dissatisfied with the percentage determined either in the first instance or on objection or appeal by the general or special Commissioners he may, within four months of that determination, require the Commissioners to refer the question of the percentage to a referee or board of referees to be appointed for the purpose by the Treasury, and the decision of the referee or board shall be final and conclusive.

(6) Nothing in section forty-one of the Income Tax Act, 1842 (as amended by any subsequent enactment or by this section), shall render a non-resident person chargeable in the name of a broker or general commission agent, or in the name of an agent, not being an authorized person carrying on the non-resident's regular agency or a person chargeable as if he were an agent in pursuance of this section, in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.

(7) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of this section in the name of a resident person shall not of itself make him chargeable in respect of profits arising from those sales or transactions.

**32. Place for assessment of income tax.**—(1) Notwithstanding anything in section one hundred and six or one hundred and forty-six of the Income Tax Act, 1842, or in any other enactment relating to income tax, a person may be charged to income tax under Schedule D. or E., whether or not he is engaged in any trade, manufacture, adventure, or concern, or any employment, vocation, or office, by commissioners acting for any parish or place in which that person ordinarily resides; and if any person has been so charged before the commencement of this Act, the charge shall not be deemed invalid by reason of that person not having been charged by the right commissioners.

Provided that nothing in this section shall affect the operation of section one hundred and seventy-one of the Income Tax Act, 1842, with respect to double assessments.

(2) Section one hundred and eight of the Income Tax Act, 1842 (which makes provision as to the place at which persons are to be assessed to income tax in respect of profits or gains arising from foreign and colonial possessions or securities) is hereby repealed.

**33. Payment of income tax by instalments in certain cases.**—(1) Income tax for any year shall, in cases to which this section applies, instead of being payable on or before the first day of January in that year, or such other date as is specified in section eighty-two of the Taxes Management Act, 1880 [43 & 44 Vict. c. 19], be payable in two equal instalments, the first on or before the first day of January in that year, or such other day as aforesaid, and the second on or before the following first day of July:

Provided that where the assessment is not signed and allowed till after the said following first day of July, this provision shall not have effect, and the duties shall be due and payable as provided by section eighty-two of the Taxes Management Act, 1880.

(2) The cases to which this section applies are income tax charged on any individual or firm under Schedule B. in respect of lands occupied for husbandry only and income tax charged on any individual or firm under Schedule D. or the rules thereof in respect of the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade or of any profession or vocation, and income tax charged on any individual in respect of any office or employment, whether under Schedule D. or E., except individuals whose income tax is deducted at definite intervals of less than half a year, and weekly wage earners whose tax is, under this Act, assessed and charged quarterly:

Provided that, as respects the tax for the current income tax year—

(a) this section shall have effect as if two instalments, the one being the amount of tax payable under the Finance Act, 1915, and the other being the additional amount of tax payable under this Act (including any tax which is payable solely owing to alterations made by the provisions of this Act), were substituted for two equal instalments; and

(b) the cases to which this section applies include cases in which

income tax could be charged quarterly under the provisions of this Act if those provisions were in force during the current income tax year.

(3) The provisions of the Income Tax Acts as to the recovery of income tax shall apply to each instalment of the tax in the same manner as they apply to the whole amount of the tax.

**34. Deductions in respect of Schedule A. tax in Scotland.**—Notwithstanding anything in section forty of the Income Tax Act, 1853, or in section fifteen of the Revenue (No. 1) Act, 1864 [27 & 28 Vict. c. 18], or in any other enactment, deductions in respect of income tax under Schedule A. on lands and heritages in Scotland made from any rent, interest, or payment due for the period ending on the fifteenth day of May, shall be made at the rate of the tax in force at the commencement of that period.

**35. Computation of profits and gains in relation to excess profits duty.**—(1) Where any person has paid excess profits duty under this Act the amount so paid shall be allowed as a deduction for the purpose of income tax in computing the profits and gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid; but where any person has received repayment of any amount previously paid by him by way of excess profits duty, the amount repaid shall be treated as profit for the year in which the repayment is received.

The payment of excess profits duty shall not be deemed to be a specific cause for the purposes of section one hundred and thirty-four of the Income Tax Act, 1842.

(2) Where in any income tax year the profits or gains from which a deduction may be made under this section come into computation, but owing to the time at which the amount of excess profits duty became ascertained it was impracticable to give effect to the deduction when assessing income tax, the amount by which the income tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for excess profits duty or, if there is no excess profits duty, shall be repaid to the taxpayer.

**36. Service of notices by post.**—Any notice or other document to be given, served, sent, or delivered, under the Income Tax Acts may be served by post in such cases as the Commissioners of Inland Revenue direct by regulations to be made by them for the purpose.

Any notice or other document to be given, served, sent, or delivered to or on an employed person may be served by post at his place of employment.

**37. Amendments to have effect in current income tax year.**—Any amendments made by this Part of this Act with respect to income tax shall have effect as respects the tax for the current income tax year except where the context otherwise requires.

### PART III.

#### EXCESS PROFITS DUTY.

**38. Charge of excess profits duty.**—(1) There shall be charged, levied, and paid on the amount by which the profits arising from any trade or business to which this Part of this Act applies, in any accounting period which ended after the fourth day of August nineteen hundred and fourteen, and before the first day of July nineteen hundred and fifteen, exceeded by more than two hundred pounds, the pre-war standard of profits as defined for the purposes of this Part of this Act, a duty (in this Act referred to as "excess profits duty") of an amount equal to fifty per cent. of that excess.

(2) For the purposes of this Part of this Act the accounting period shall be taken to be the period for which the accounts of the trade or business have been made up, and where the accounts of any trade or business have not been made up for any definite period, or for the period for which they have been usually made up, or a year or more has elapsed without accounts being made up, shall be taken to be such period not being less than six months or more than a year ending on such a date as the Commissioners of Inland Revenue may determine.

Where any accounting period is a period of less than a year this section shall have effect as if there were substituted for two hundred pounds a proportionately reduced amount.

(3) Where a person proves that in any accounting period, which ended after the fourth day of August nineteen hundred and fourteen, his profits have not reached the point which involves liability to excess profits duty, or that he has sustained a loss in his trade or business, he shall be entitled to repayment of such amount paid by him as excess profits duty in respect of any previous accounting period, or to set off against any excess profits duty payable by him in respect of any succeeding accounting period, such an amount as will make the total amount of excess profits duty paid by him during the whole period accord with his profits or losses during that period.

**39. Trades and businesses to which excess profits duty applies.**—The trades and businesses to which this Part of this Act applies are all trades or businesses (whether continuously carried on or not) of any description carried on in the United Kingdom, or owned or carried on in any other place by persons ordinarily resident in the United Kingdom, excepting—

(a) husbandry in the United Kingdom; and

(b) offices or employments; and

(c) any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required, or only capital expenditure of a comparatively small amount,



but including the business of any person taking commissions in respect of any transactions or services rendered, and of any agent of any description (not being a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency).

**40. Determination of profits and pre-war standard.**—(1) The profits arising from any trade or business to which this Part of this Act applies shall be separately determined for the purpose of this Part of this Act, but shall be so determined on the same principles as the profits and gains of the trade or business are or would be determined for the purpose of income tax, subject to the modifications set out in the First Part of the Fourth Schedule to this Act and to any other provisions of this Act.

(2) The pre-war standard of profits for the purposes of this Part of this Act shall, subject to the provisions of this Act, be taken to be the amount of the profits arising from the trade or business on the average of any two of the three last pre-war trade years, to be selected by the taxpayer (in this Part of this Act referred to as the profits standard): Provided that if it is shown to the satisfaction of the Commissioners of Inland Revenue that that amount was less than the percentage standard as hereinafter defined, the pre-war standard of profits shall be taken to be the percentage standard.

The percentage standard shall, for the purposes of this Part of this Act, be taken to be an amount equal to the statutory percentage on the capital of the trade or business as existing at the end of the last pre-war trade year, subject, however, to the provisions of this Act as to any alteration in the manner of calculating the percentage standard in special cases.

The statutory percentage shall be six per cent. in the case of a trade or business carried on or owned by a company or other body corporate, and seven per cent. in the case of any other trade or business, subject, however, to the provisions of this Act as to the increase in that percentage in certain cases.

The provisions contained in the Second Part of the Fourth Schedule to this Act shall have effect with respect to the computation of the profits of a pre-war trade year, and the provisions contained in the Third Part of the Fourth Schedule shall have effect with respect to the ascertainment of capital for the purposes of this Part of this Act.

"The last pre-war trade year" means the year ending at the end of the last accounting period before the fifth day of August, nineteen hundred and fourteen, and "the three last pre-war trade years" means the three years ending at the three corresponding times.

(3) Where it appears to the Commissioners of Inland Revenue, on the application of a taxpayer in any particular case, that any provisions of the Fourth Schedule to this Act should be modified in his case, owing to a change in the constitution of a partnership, or to the postponement or suspension, as a consequence of the present war, of renewals or repairs, or to exceptional depreciation or obsolescence of assets employed in the trade or business due to the present war, or to the necessity in connection with the present war of providing plant which will not be wanted for the purposes of the trade or business after the termination of the war, or to any other special circumstances specified in regulations made by the Treasury, those Commissioners shall have power to allow such modifications of any of the provisions of that schedule as they think necessary in order to meet the particular case.

If the Commissioners refuse, on any such application, to allow any modification, or if the applicant is dissatisfied with any modification allowed, the applicant may require the Commissioners to refer the case to a Board of Referees, to be appointed for the purposes of this Part of this Act by the Treasury, and that Board shall consider any case so referred and have the same powers with respect thereto as the Commissioners have.

**41. Adjustments for increased or decreased capital.**—(1) Where capital has been increased during the accounting period, a deduction shall be made from the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been increased, for the whole accounting period if the increased capital has been employed for the whole accounting period, and if the increased capital has been employed for part only of the accounting period, for that part of the accounting period.

(2) Where capital has been decreased during the accounting period, an addition shall be made to the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been so decreased, for the whole accounting period, if the capital has been decreased for the whole accounting period, and if the capital has been decreased for part only of the accounting period, for that part of the accounting period.

(3) For the purposes of this section capital shall be taken to be increased or decreased, as the case may be, where the pre-war standard of profits is a profits standard, if the capital employed in the trade or business exceeds or is less than the average amount of capital employed during the pre-war trade years or year by reference to which the profits standard has been arrived at, and, where the pre-war standard of profits is a percentage standard, if the capital exceeds or is less than the capital on which the percentage standard has been calculated.

(4) Where any capital employed in a trade or business which was so employed for the first time within three years before the first day of August, nineteen hundred and fourteen, has only commenced to be remunerative or fully remunerative in the accounting period, an amount equal to the statutory percentage, or where interest has been earned on the capital, but at a rate less than the statutory percentage, an

amount which would bring the interest earned on the capital up to the statutory percentage, as the case may be, shall be added to the profits standard.

**42. Reference to the Board of Referees of questions as to increase of percentages, &c.**—Where an application is made to the Commissioners of Inland Revenue—

(1) For an increase of the statutory percentage as respects any class of trade or business, or for a calculation of the percentage standard in the case of any class of trade or business in which the amount of capital actually employed in the trade or business is, owing to the nature of the trade or business, small compared with the capital necessarily at stake for that trade or business, by reference to some factor other than the capital of the trade or business or to some additional factor; or

(2) For an alteration of the pre-war standard of profits as respects capital employed for the purpose of the manufacture of war materials or for munitions work and which could not be expected to be remunerative or wholly remunerative, except in time of war, in a business which has been wholly or mainly carried on for those purposes;

the Commissioners, unless they are of opinion that the application is frivolous or vexatious or relates to matters already decided by a Board of Referees, shall refer the case to a Board of Referees to be appointed for the purpose of this Part of this Act by the Treasury, and that Board shall deal with the case, and may, by order, if they think fit, increase the statutory percentage or alter the percentage standard for the class of trade or business the subject of the order, or alter the pre-war standard of profits, as the case requires.

On any such order being made, this part of this Act shall have effect as from the date named in the order as if the percentage or standard named in the order was substituted for the percentage or standard fixed by this Act; and where, in pursuance of any such order, the statutory percentage is increased or the percentage standard is altered as respects any class of trade or business, the statutory percentage shall be increased and the percentage standard shall be altered respectively for all purposes of this Part of this Act as respects any trade or business belonging to that class.

This section shall apply to any subdivision of a trade or business based either on any special feature of the trade or business or on locality as it applies to a class or trade or business, in any case where the Board of Referees are of opinion that the subdivision can properly be dealt with separately.

**43. Excess mineral rights duty.**—(1) Where the amount payable to any person as rent in respect of the right to work minerals or of any mineral wayleaves (in cases where the right to work the minerals and the mineral wayleaves are not part of the assets of any trade or business) varies according to the price of the minerals, and the amount so payable in respect of any working year ending on any date after the commencement of the present war (in this section referred to as the accounting year) exceeds the pre-war standard of that rent, there shall be paid as an addition to any mineral rights duty payable or paid, either directly or by deduction, by reference to the amount of the rent paid in that working year, by that person (in this section referred to as the person liable) an amount equal to fifty per cent. of that excess.

(2) The pre-war standard of rent shall, for the purposes of this section, be taken to be the average of any two of the three last pre-war rent values, to be selected by the taxpayer, and in cases where the minerals have not been worked or the wayleaves have not been let throughout the three years by reference to which the three last pre-war rent values are to be calculated, or for any other reason there are no proper data for ascertaining the pre-war rent values, shall be taken to be such amount as may be fixed by the Commissioners of Inland Revenue, having regard to the data afforded by the working and price of minerals in like circumstances, subject nevertheless to the same appeal as that to which the assessment of duty by the Commissioners is subject under Part I. of the Finance (1909-10) Act, 1910.

The pre-war rent value shall, as respects each of the three years immediately preceding the first accounting year, be taken to be the sum to which the rent for the accounting year would amount if the rent, so far as variable according to price, were based on the average prices governing the payment of the rent in that year.

(3) Any amount payable in any accounting year by the lessee of minerals or wayleaves to a superior lessor as rent in respect of the minerals or wayleaves shall be treated as a deduction from the amount payable to the lessee as rent for that year, and in computing the pre-war rent values a corresponding deduction shall be made on account of any such rent.

(4) Any increment value duty payable annually under section twenty-two of the Finance (1909-10) Act, 1910, shall, when paid, be treated as a deduction from the rent payable to any person in the year in which the duty is paid, and a corresponding deduction shall be made in computing the pre-war standard with which the rent for that year is to be compared.

(5) Any duty payable under this section shall be assessed by the Commissioners of Inland Revenue on the person liable, subject to the same appeal as that to which an assessment of duty by the Commissioners under Part I. of the Finance (1909-10) Act, 1910, is subject, and shall be recoverable as a debt due to His Majesty from that person.

(6) Subsection (3) of section twenty of the Finance (1909-10) Act, 1910, shall extend so as to authorize particulars to be required of any lease of minerals or wayleaves and as to the sums paid or payable there-

under, and of such other particulars as to the minerals or wayleaves as the Commissioners may require for the purpose of this section.

(7) Expressions to which a special meaning is attached by Part I. of the Finance (1909-10) Act, 1910, shall have the same meaning in this section.

**44. Returns for purpose of Part III. and penalty for fictitious transactions.**—(1) The Commissioners of Inland Revenue may, for the purposes of this Part of this Act, require any person engaged in any trade or business to which this Part of this Act applies, or who was so engaged during any accounting period or pre-war trade year, to furnish them within two months after the requirement for the return is made, with returns of the profits of the trade or business during the accounting period or pre-war trade years and such other particulars in connection with the trade or business as the Commissioners may require.

(2) It shall be the duty of every person chargeable to excess profits duty under this Part of this Act to give notice that he is chargeable to the Commissioners of Inland Revenue before the thirty-first day of January nineteen hundred and sixteen, and it shall be the duty of the liquidator of every company which is being wound up at the time of the commencement of this Act or is wound up after the commencement of this Act, and is chargeable to excess profits duty, to give notice of the fact to the Commissioners of Inland Revenue.

If any person fails to furnish a proper return in accordance with this section or to comply with any requirement of the Commissioners under this section, or to give any notice required by this section, he shall be liable on summary conviction to a fine not exceeding one hundred pounds and to a further fine not exceeding ten pounds a day for every day during which the offence continues after conviction therefor.

(3) A person shall not, for the purpose of avoiding the payment of excess profits duty, enter into any fictitious or artificial transaction or carry out any fictitious or artificial operation, and, if he has entered into any such transaction or carried out any such operation before the commencement of this Act, shall inform the Commissioners of Inland Revenue of the nature of the transaction or operation.

If any person acts in contravention of, or fails to comply with, this provision, he shall be liable on summary conviction to a fine not exceeding one hundred pounds.

**45. Supplemental provisions as to excess profits duty.**—(1) The excess profits duty shall be assessed by the Commissioners of Inland Revenue, and shall be payable at any time, not being less than two months, after it is assessed.

The Commissioners may, in any case where they think fit, allow the duty to be paid in instalments of such amount payable at such times as the Commissioners direct.

(2) The duty may be assessed on any person for the time being owning or carrying on the trade or business or acting as agent for that person in carrying on the trade or business, or, where a trade or business has ceased, on the person who owned or carried on the trade or business or acted as agent in carrying on the trade or business immediately before the time at which the trade or business ceased, and where there has been a change of ownership of the trade or business, the Commissioners of Inland Revenue may, if they think fit, take the accounting period as the period ending on the date on which the ownership has so changed and assess the duty on the person who owned or carried on the trade or business or acted as agent for the person carrying on the trade or business at that date.

(3) The amount of duty payable shall be recoverable as a debt due to His Majesty from the person on whom it is assessed.

Any such amount shall if it is less than fifty pounds be recoverable also summarily as a civil debt.

(4) Where a company is wound up after the commencement of this Act, and before the first day of July, nineteen hundred and sixteen, and the company would be chargeable with excess profits duty if the provisions of this Act were continued and extended to accounting periods ending before the first day of July, nineteen hundred and sixteen, it shall be the duty of the liquidator of the company to give notice to the Commissioners of Inland Revenue, and to set aside such sum out of the assets of the company as appears to the Commissioners of Inland Revenue to be sufficient to provide for any such excess profits duty as may become chargeable.

(5) Any person who is dissatisfied with the amount of any assessment made upon him by the Commissioners of Inland Revenue under this Part of this Act may (except in cases where a special right of appeal is given under this Part of this Act) appeal to the general Commissioners for the division in which he is assessed, or to the special Commissioners, and those Commissioners shall have power on any appeal, if they think fit, to summon witnesses and examine them upon oath.

The power under sections twenty-one and twenty-two of the Income Tax Act, 1853, to require an appeal in Ireland to the special Commissioners to be reheard by the county court judge, or chairman of quarter sessions, or recorder, shall apply to an appeal in Ireland under this provision.

Section fifty-nine of the Taxes Management Act, 1880 (which relates to the statement of a case on a point of law), shall apply with the necessary modifications in the case of any appeal to the general or special Commissioners under this section, or of the rehearing of any such appeal in Ireland, and in the case of a reference to the Board of Referees under this Part of this Act, as it applies in the case of appeals to the general or special Commissioners under the Income Tax Acts.

(6) The duty assessed by the Commissioners of Inland Revenue shall be payable notwithstanding any appeal under this section except in cases where the Commissioners of Inland Revenue direct to the contrary, but the Commissioners shall make such repayments, if any, as are necessary to give effect to any decision on appeal as soon as possible after such decision has been given.

(7) The Commissioners of Inland Revenue may make regulations with respect to the assessment and collection of the excess profits duty and the hearing of appeals under this section, and may by those regulations apply and adapt any enactments relating to the assessment and collection of income tax, or the hearing of appeals as to income tax by the general or special Commissioners, which do not otherwise apply.

(8) All Commissioners and other persons employed for any purpose in connection with the assessment or collection of excess profits duty shall be subject to the same obligations as to secrecy with respect to excess profits duty as those persons are subject to with respect to income tax, and any oath taken by any such person as to secrecy with respect to income tax shall be deemed to extend also to secrecy with respect to excess profits duty.

#### PART IV.

##### GENERAL.

**46. Extension of 4 & 5 Geo. 5, c. 76, to legacy and succession duty.**—Section two of the Death Duties (Killed in War) Act, 1914 (which provides for the remission of estate duty in respect of property passing more than once owing to deaths caused by the war), shall apply, and shall be deemed always to have applied, to succession and legacy duty as well as to estate duty.

**47. Power of Treasury to issue securities free of taxation.**—The Treasury may, if they think fit, during the continuance of the present war and a period of twelve months thereafter, issue any securities which they have power to issue for the purpose of raising any money or any loan with a condition that neither the capital nor the interest thereof shall be liable to any taxation, present or future, so long as it is shown in manner directed by the Treasury that the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, and securities issued with such a condition shall be exempt accordingly.

**48. Procedure on death of person entitled to Government stock.**—Where the holder of any Government stock dies, the production of probate, confirmation, or letters of administration granted by any court in the United Kingdom having authority to grant the same shall be sufficient authority to the Banks of England and Ireland, to the National Debt Commissioners, to the Postmaster General, and to any savings bank authority to transfer the stock to the person to whom the probate, confirmation, or letters of administration were granted, or as directed by that person.

The expression "Government stock" has the same meaning as in the Savings Bank Act, 1893 [56 & 57 Vict. c. 69], as amended by any subsequent enactment.

**49. Suspension of road improvement grant.**—Until Parliament otherwise decides, the charge on the Consolidated Fund under section ninety of the Finance (1909-10) Act, 1910, for the road improvement grant shall cease, and without prejudice to any payments already made, no further payments shall be made out of the Consolidated Fund on account of that grant.

**50. Rules and regulations to be laid before Parliament.**—Any rule or regulation made under this Act shall be laid before each House of Parliament forthwith, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House has sat next after any such rule or regulation is laid before it praying that the rule or regulation may be annulled, His Majesty in Council may annul the rule or regulation, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

**51. Construction, repeal, and short title.**—(1) Part I. of this Act, so far as it relates to duties of Customs, shall be construed together with the Customs Consolidation Act, 1876, and any enactments amending that Act, and so far as it relates to duties of excise shall be construed together with the Acts which relate to the duties of excise and the management of those duties.

Part II. of this Act shall be construed together with the Income Tax Acts, 1842 to 1853, and any other enactments relating to income tax, and those enactments and Part II. of this Act are in this Act referred to as the Income Tax Acts.

In this and in any other Act passed after the commencement of this Act relating to Income Tax unless the context otherwise requires—

the expression "General Commissioners" means the Commissioners for the general purposes of the Acts relating to Income Tax, and

the expression "Special Commissioners" means the Commissioners for the special purposes of the Acts relating to Income Tax.

(2) The Acts mentioned in the Fifth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) This Act may be cited as the Finance (No. 2) Act, 1915.

[There are the following Schedules, the first two of which it is not necessary to print here in full.]



FIRST SCHEDULE.

[Sections 6, 7.]

SUGAR, &c.

PART I.—DUTIES.

PART II.—DRAWBACKS AND ALLOWANCES.

PART III.—PROVISIONS AS TO EXCISE DUTIES.

SECOND SCHEDULE.

[Section 9.]

TOBACCO.

PART I.—ADDITIONAL CUSTOMS DUTIES.

PART II.—ADDITIONAL EXCISE DUTIES.

PART III.—RATES OF DRAWBACK.

THIRD SCHEDULE.

[Section 20 (2).]

TABLE.

Percentage by which the Actual Income is less than the Income on which Income Tax has been assessed or charged.				Amount of Repayment of Additional Tax.	
11 per cent. and under 12 per cent.	-	-	-	10 per cent.	
12 " " 13 " "	-	-	-	20 "	
13 " " 14 " "	-	-	-	30 "	
14 " " 15 " "	-	-	-	40 "	
15 " " 16 " "	-	-	-	50 "	
16 " " 17 " "	-	-	-	60 "	
17 " " 18 " "	-	-	-	70 "	
18 " " 19 " "	-	-	-	80 "	
19 " " 20 " "	-	-	-	90 "	
20 " or more	-	-	-	100 "	

FOURTH SCHEDULE.

[Section 40.]

PART I.—COMPUTATION OF PROFITS.

1. The profits shall be taken to be the actual profits arising in the accounting period; and the principle of computing profits by reference to any other year or an average of years shall not be followed.

2. The principle of the Income Tax Acts under which deductions are not allowed for interest on money borrowed for the purpose of the trade or business, or for rent, or royalties, or for other payments income tax on which is collected at the source (not being payments of dividends or payments for the distribution of profits), and under which profits or gains arising from lands, tenements, or hereditaments forming part of the assets of the trade or business are excluded shall not be followed.

3. Deductions for wear and tear or for any expenditure of a capital nature for renewals, or for the development of the trade or business or otherwise in respect of the trade or business, shall not be allowed except such as may be allowed under the Income Tax Acts, and if allowed shall be only of such amount as appears to the Commissioners of Inland Revenue to be reasonably and properly attributable to the year or accounting period.

4. Deductions shall not be allowed on account of the liability to pay, or the payment of, income tax or excess profits duty, but a deduction shall be allowed (if not otherwise allowed by means of the adoption of the principle of the Income Tax Acts) for any sum which has been paid in respect of the profits on account of any excess profits duty or similar duty imposed in any country outside the United Kingdom.

5. Any deduction allowed for the remuneration of directors, managers, and persons concerned in the management of the trade or business shall not, unless the Commissioners of Inland Revenue, owing to any special circumstances or to the fact that the remuneration of any managers or managing directors depends on the profits of the trade or business, otherwise direct, exceed the sums allowed for those purposes in the last pre-war trade year or a proportionate part thereof as the case requires, and no deduction shall be allowed in respect of any transaction or operation of any nature, where it appears, or to the extent to which it appears, that the transaction or operation has artificially reduced the amount to be taken as the amount of the profits of the trade or business for the purposes of this Act.

6. Where any company, either in its own name or that of a nominee, owns the whole of the ordinary capital of any other company carrying on the same trade or business or so much of that capital as under the general law a single shareholder can legally own, the provisions of Part III. of this Act as to excess profits duty and the pre-war standard of profits shall apply as if that other company were a branch of the

first-named company, and the profits of the two companies shall not be separately assessed.

7. Where in the case of any trade or business—

(a) the percentage standard is adopted as the pre-war standard of profits; and

(b) the net result of the trade or business during the three last pre-war trade years has shown a loss; and

(c) any part of the profits has been applied in extinction of that loss;

then in estimating the profits a deduction shall be allowed equal to the amount of profits so applied.

8. In estimating the profits no account shall be taken of income received from investments except in the case of life assurance businesses and businesses where the principal business consists of the making of investments. Where account is taken of any such income—

(a) any variation in the value of any of those investments which appears to the Commissioners of Inland Revenue not to be due to a variation in profits shall also be taken into account; and

(b) where the income has been derived from profits in respect of which any payment or repayment of excess profits duty has been made under this Act, such deduction or addition shall be made in computing the profits as will make proper allowance for that payment or repayment of duty.

9. In computing the total profits of a local authority from any trades or businesses carried on by that authority the total amount which is required to be raised by them, out of the rates or otherwise, for sinking fund purposes in connection with those trades or business shall be allowed as a deduction.

10. In the case of societies registered under the Industrial and Provident Societies Acts the excess profits duty shall be charged on the sum by which the profits per member for the accounting period (including any surplus arising from transactions with members) exceed the like profits per member in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits, multiplied by the number of members in the accounting period.

11. In the case of any contract extending beyond one accounting period from the date of its commencement to the completion thereof and only partially performed in any accounting period there shall (unless the Commissioners of Inland Revenue, owing to any special circumstances, otherwise direct) be attributed to each of the accounting periods in which such contract was partially performed, such proportion of the entire profits or loss or estimated profits or loss in respect of the complete performance of the contract as shall be properly attributable to such accounting periods respectively, having regard to the extent to which the contract was performed in such periods.

PART II.—PRE-WAR STANDARD.

1. The profits of any pre-war trade year shall be computed on the same principles and subject to the same provisions as the profits of the accounting period are computed.

2. Where the accounting period for which the excess profits duty is to be assessed is less than a year, the amount of the pre-war standard of profits shall be proportionately reduced.

3. Where it is shown to the satisfaction of the Commissioners of Inland Revenue in the case of any trade or business that the three last pre-war trade years have been years of abnormal depression, any four of the last six pre-war trade years may be substituted for the purposes of the pre-war standard of profits for any two of the three last pre-war trade years.

The three last pre-war trade years shall not be considered as years of abnormal depression unless the average profits of those years have been at least twenty-five per cent. lower than the average profits of the preceding three years.

4. Where owing to the recent commencement of a trade or business there have not been three pre-war trade years, but there have been two pre-war trade years, the pre-war standard of profits shall be taken to be the amount of the profits arising from the trade or business on the average of those two years or, at the option of the taxpayer, the profits arising from the trade or business during the last of those two years, and where there have not been two pre-war trade years, but there has been one pre-war trade year, the pre-war standard of profits shall be taken to be the profits arising from the trade or business during that year; and where there has not been one pre-war trade year, the pre-war standard of profits shall be taken to be the statutory percentage on the average amount of capital employed in the trade or business during the accounting period.

Where the trade or business is an agency or business of a nature involving capital of a comparatively small amount, the pre-war standard of profits shall be computed by reference to the profits arising from any trade, business, office, employment or profession of any sort, whether liable to excess profits duty or not, carried on by the agent or other person before his new trade or business commenced as if it was the same trade or business; but only to the extent to which the income from the former trade, business, office, employment or profession has been diminished.

5. Where since the commencement of the three last pre-war trade years a trade or business has changed ownership, the provisions of this

Part of this Schedule shall apply as if a new trade or business had been commenced on the change of ownership, except in cases when the taxpayer makes an application that the provisions of Part III. of this Act and this Schedule should apply as if the trade or business had not changed ownership, but in that case such modifications (if any) shall be made in the application of this Schedule as may be necessary to make the basis on which the profits standard is computed the same as that on which the profits of the accounting period are computed.

6. It is hereby declared that, where any business or trade is confined to the management of any particular assets, but power exists to substitute other assets for those particular assets or any of them, such a substitution shall not be deemed, for the purposes of Part III. of this Act, to constitute a change of ownership of the business; but, where any such substitution has been carried out by the sale of assets and the purchase of other assets, the capital of the trade or business shall be taken to be increased or decreased, as the case may be, only by the amount of the difference between the price of the assets purchased and the price obtained for the assets sold, and the capital representing the assets purchased shall be estimated on the same basis for all the purposes of Part III. of this Act.

#### PART III.—CAPITAL.

1. The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

(a) so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to any proper deductions for wear and tear or replacement, or for unpaid purchase money; and

(b) so far as it consists of assets being debts due to the trade or business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for income tax purposes; and

(c) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the trade or business, subject to any proper deductions for wear and tear or replacement.

Nothing in this part of this Schedule shall prevent accumulated profits employed in the business being treated as capital.

2. Any capital the income on which is not taken into account for the purposes of Part I. of this Schedule, and any borrowed money or debts, shall be deducted in computing the amount of capital for the purposes of Part II. of this Act.

3. Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where a trade or business has been converted into a company and the shares in the company are wholly or mainly held by the person who was owner of the trade or business, no value shall be attached to those shares so far as they are represented by goodwill or otherwise than by material assets of the company unless the Commissioners of Inland Revenue in special circumstances otherwise direct. Patents and secret processes shall be deemed to be material assets.

#### FIFTH SCHEDULE.

[Section 51.]

#### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Vict. c. 35	The Income Tax Act, 1842	Section one hundred and eight.
43 & 44 Vict. c. 24	The Spirits Act, 1880	Table B. in the Second Schedule.
7 Ed. 7, c. 13	The Finance Act, 1907	Subsection (4) of section nineteen.
2 & 3 Geo. 5, c. 8	The Finance Act, 1912	Section two.

#### CHAPTER 90.

#### INDICTMENTS ACT, 1915.

An Act to amend the Law relating to Indictments in Criminal Cases, and matters incidental or similar thereto. [23rd December, 1915.]

Be it enacted, &c. :—

1. *Rules as to indictments.*—The rules contained in the First Schedule to this Act with respect to indictments shall have effect as if enacted in this Act, but those rules may be added to, varied, or annulled by further rules made by the rule committee under this Act.

2. *Powers of rule committee.*—(1) There shall be established for the purposes of this Act a rule committee consisting of the Lord Chief Justice of England for the time being, and of a judge of the High Court, a chairman of quarter sessions, a recorder, a clerk of assize, a clerk of the peace, and another person having experience in criminal procedure, appointed in each case by the Lord Chief Justice.

(2) The rule committee shall have power from time to time, subject

to the approval of the Lord Chancellor, to make rules varying or annulling the rules contained in the First Schedule to this Act and to make further rules with respect to the matters dealt with in those rules, and those rules shall have effect subject to any modifications or additions so made.

(3) Any rules made by the rule committee shall be laid, as soon as may be, before both Houses of Parliament, and, if within forty days on which either House has sat since the rules were so laid before the House a petition is presented to His Majesty by that House praying that the rules or any part of them may be annulled, His Majesty may thereupon by Order in Council annul the same, and the same shall thenceforth be void, but without prejudice to the validity of anything done thereunder.

(4) The term of office of any person who is a member of the committee by virtue of appointment shall be such as may be specified in the appointment.

3. *General provisions as to indictments.*—(1) Every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

(2) Notwithstanding any rule of law or practice, an indictment shall, subject to the provisions of this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the rules under this Act.

4. *Joinder of charges in the same indictment.*—Subject to the provisions of the rules under this Act, charges for more than one felony or for more than one misdemeanour, and charges for both felonies and misdemeanours, may be joined in the same indictment, but where a felony is tried together with any misdemeanour, the jury shall be sworn and the person accused shall have the same right of challenging jurors as if all the offences charged in the indictment were felonies.

5. *Orders for amendment of indictment, separate trial, and postponement of trial.*—(1) Where, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice, and may make such order as to the payment of any costs incurred owing to the necessity for amendment as the court thinks fit.

(2) Where an indictment is so amended, a note of the order for amendment shall be endorsed on the indictment, and the indictment shall be treated for the purposes of the trial and for the purposes of all proceedings in connection therewith as having been found by the grand jury in the amended form.

(3) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment, the court may order a separate trial of any count or counts of such indictment.

(4) Where, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of any power of the court under this Act to amend an indictment or to order a separate trial of a count, the court shall make such order as to the postponement of the trial as appears necessary.

(5) Where an order of the court is made under this section for a separate trial or for the postponement of a trial—

(a) if such an order is made during a trial the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed or on the indictment, as the case may be; and

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate indictment, and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged) as if the trial had not commenced; and

(c) the court may make such order as to costs and as to admitting the accused person to bail, and as to the enlargement of recognizances and otherwise as the court thinks fit.

(6) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

6. *Costs of defective or redundant indictments.*—Where it appears to the court that an indictment contains unnecessary matter, or is of unnecessary length, or is materially defective in any respect, the court may make such order as to the payment of that part of the costs of the prosecution which has been incurred by reason of the indictment so containing unnecessary matter, or being of unnecessary length, or being materially defective as the court thinks fit.

7. *Provision as to Vexatious Indictments Acts.*—Nothing in this Act shall prevent an indictment being open to objection if it contravenes or fails to comply with the Vexatious Indictments Act, 1859 [22 & 23 Vict. c. 17], as amended by section one of the Criminal Law Amendment Act, 1867 [30 & 31 Vict. c. 35], or any other enactment: Provided that an indictment shall not be open to objection under those Acts on the ground that a count is joined with the rest of the indictment which could



not at the time of the passing of the Criminal Law Amendment Act, 1867, be lawfully joined, if that count can be lawfully joined under the law for the time being in force.

**8. Savings and interpretation.**—(1) Nothing in this Act or the rules thereunder shall affect the law or practice relating to the jurisdiction of a court or the place where an accused person can be tried, nor prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions, or intentions which are legally necessary to constitute the offence with which the person accused is charged, nor otherwise affect the laws of evidence in criminal cases.

(2) In this Act, unless the context otherwise requires, the expression "the court" means the court before which any indictable offence is tried or prosecuted.

(3) The provisions of this Act relating to indictments shall apply to criminal informations in the High Court and inquisitions, and also to any plea, replication, or other criminal pleading, with such modifications as may be made by rules under this Act.

**9. Repeal, extent, short title, and commencement.**—(1) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

(2) This Act shall not extend to Scotland or Ireland.

(3) This Act may be cited as the Indictments Act, 1915.

(4) This Act shall come into operation on the first day of April nineteen hundred and sixteen, but shall not apply to indictments in the case of persons committed for trial before that date, or to the trial of any such person.

#### SCHEDULES.

[Sections 1, 2 (2).]

#### FIRST SCHEDULE.

##### RULES.

**1. Material, &c., for indictments.**—(1) An indictment may be on parchment or durable paper, and may be either written or printed, or partly written and partly printed.

(2) Each sheet on which an indictment is set out shall be not more than 12 and not less than 6 inches in length, and not more than 14 and not less than 12 inches in width, and if more than one sheet is required, the sheets shall be fastened together in book form.

(3) A proper margin not less than 3 inches in width shall be kept on the left-hand side of each sheet.

(4) Figures and abbreviations may be used in an indictment for expressing anything which is commonly expressed thereby.

(5) There shall be endorsed on the back of an indictment the name of every witness examined or intended to be examined by the grand jury, and the foreman of the grand jury shall write his initials against the name of each witness so examined.

(6) An indictment shall not be open to objection by reason only of any failure to comply with this rule.

**2. Commencement of the indictment.**—The commencement of the indictment shall be in the following form:—

The King v. A.B.

COURT OF TRIAL [e.g., Central Criminal Court, [or] In the High Court of Justice, King's Bench Division, [or] Durham County Assizes held at Durham, [or] Hants Quarter Sessions held at Winchester.]

#### PRESENTMENT OF THE GRAND JURY.

A.B. is charged with the following offence [offences]:—

**3. Joining of charges in one indictment.**—Charges for any offences, whether felonies or misdemeanours, may be joined in the same indictment if those charges are founded on the same facts, or form or are a part of a series of offences of the same or a similar character.

**4. Mode in which offences are to be charged.**—(1) A description of the offence charged in an indictment, or where more than one offence is charged in an indictment, of each offence so charged, shall be set out in the indictment in a separate paragraph called a count.

(2) A count of an indictment shall commence with a statement of the offence charged, called the statement of offence.

(3) The statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by statute, shall contain a reference to the section of the statute creating the offence.

(4) After the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary:

Provided that where any rule of law or any statute limits the particulars of an offence which are required to be given in an indictment, nothing in this rule shall require any more particulars to be given than those so required.

(5) The forms set out in the appendix to these rules or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable, and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of

offence and the particulars of offence being varied according to the circumstances in each case.

(6) Where an indictment contains more than one count, the counts shall be numbered consecutively.

**5. Provisions as to statutory offences.**—(1) Where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities, or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence.

(2) It shall not be necessary, in any count charging a statutory offence, to negative any exception or exemption from or qualification to the operation of the statute creating the offence.

**6. Description of property.**—(1) The description of property in a count in an indictment shall be in ordinary language and such as to indicate with reasonable clearness the property referred to, and if the property is so described it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property.

(2) Where property is vested in more than one person, and the owners of the property are referred to in an indictment, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such as "Inhabitants," "Trustees," "Commissioners," or "Club" or other such name, it shall be sufficient to use the collective name without naming any individual.

**7. Description of persons.**—The description or designation in an indictment of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree, or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as "a person unknown."

**8. Description of document.**—Where it is necessary to refer to any document or instrument in an indictment, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof.

**9. General rule as to description.**—Subject to any other provisions of these rules, it shall be sufficient to describe any place, time, thing, matter, act, or omission whatsoever to which it is necessary to refer in any indictment, in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

**10. Statement of intent.**—It shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person where the statute creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

**11. Charge of previous convictions, &c.**—Any charge of a previous conviction of an offence or of being a habitual criminal or a habitual drunkard shall be charged at the end of the indictment by means of a statement—in the case of a previous conviction that the person accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence, and in the case of a habitual criminal or habitual drunkard, that the offender is a habitual criminal or a habitual drunkard, as the case may be.

**12. Saving for s. 32 (4) of 8 Edw. 7, c. 67.**—Nothing in these rules or in any rules made under section two of this Act shall affect the provisions of sub-section (4) of section thirty-two of the Children Act, 1908.

**13. Duty to furnish copy of indictment.**—(1) It shall be the duty of the clerk of assize, after a true bill has been found on any indictment, to supply to the accused person, on request, a copy of the indictment free of charge.

(2) The cost of any copy supplied to the accused person whether under this rule or otherwise shall be treated as part of the costs of the prosecution for the purpose of section one of the Costs in Criminal Cases Act, 1908 [8 Edw. 7, c. 15].

(3) In the application of this rule to quarter sessions, the clerk of the peace shall be substituted for the clerk of assize.

**14. Interpretation.**—The Interpretation Act, 1889 [52 & 53 Vict. c. 63], applies for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

**15. Short title.**—These rules may be cited as the Indictment rules, 1915, and these rules, together with any rules made under section two of this Act, may be cited together by such collective title as may be prescribed by the last-mentioned rules.

## APPENDIX TO RULES.

## FORMS OF INDICTMENT.

1.

## STATEMENT OF OFFENCE.

Murder.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, murdered *J.S.*

2.

## STATEMENT OF OFFENCE.

Accessory after the fact to murder.

## PARTICULARS OF OFFENCE.

*A.B.*, well knowing that one, *H.C.*, did on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, murder *C.C.*, did on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, and on other days thereafter receive, comfort, harbour, assist and maintain the said *H.C.*

3.

## STATEMENT OF OFFENCE.

Manslaughter.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, unlawfully killed *J.S.*

4.

## STATEMENT OF OFFENCE.

Rape.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, had carnal knowledge of *E.F.* without her consent.

5.

## STATEMENT OF OFFENCE.

## First Count.

Wounding with intent, contrary to section 18 of the Offences against the Person Act, 1861.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, wounded *C.D.*, with intent to do him grievous bodily harm, or to maim, disfigure, or disable him, or to resist the lawful apprehension of him the said *A.B.*

## STATEMENT OF OFFENCE.

## Second Count.

Wounding, contrary to section 20 of the Offences against the Person Act, 1861.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, maliciously wounded *C.D.*

6.

## STATEMENT OF OFFENCE.

Cruelty to a child, contrary to section 12 of the Children Act, 1908.

## PARTICULARS OF OFFENCE.

*A.B.*, between the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, being a person over the age of sixteen years, having the custody, charge, or care of *C.D.*, a child, ill-treated or neglected the said child, or caused or procured the said child to be ill-treated or neglected in a manner likely to cause the said child unnecessary suffering or injury to its health.

7.

## STATEMENT OF OFFENCE.

Larceny, contrary to section 67 of the Larceny Act, 1861.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, being clerk or servant to *M.N.*, stole from the said *M.N.* ten yards of cloth.

8.

## STATEMENT OF OFFENCE.

Robbery with violence, contrary to section 42 of the Larceny Act, 1861.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, robbed *C.D.* of a watch, and at the time of or immediately before or immediately after such robbery did use personal violence to the said *C.D.*

9.

## STATEMENT OF OFFENCE.

## First Count.

Larceny after a previous conviction.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, stole a bag, the property of *C.D.* *A.B.*, has been previously convicted of burglary on the \_\_\_\_\_ day of \_\_\_\_\_, at the assizes held at Reading.

## STATEMENT OF OFFENCE.

## Second Count.

Receiving stolen goods, contrary to section 91 of the Larceny Act, 1861.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, did receive a bag, the property of *C.D.*, knowing the same to have been stolen.

10.

## STATEMENT OF OFFENCE.

Burglary and larceny, contrary to section 60 of the Larceny Act, 1861.

## PARTICULARS OF OFFENCE.

*A.B.*, in the night of the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, did break and enter the dwelling-house of *C.D.* with intent to steal therein, and did steal therein one watch, the property of *S.T.*, the said watch being of the value of ten pounds.

11.

## STATEMENT OF OFFENCE.

Sending threatening letter, contrary to section 46 of the Larceny Act, 1861.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, sent, delivered or uttered to or caused to be received by *C.D.*, a letter accusing or threatening to accuse the said *C.D.* of an infamous crime with intent to extort money from the said *C.D.*

12.

## STATEMENT OF OFFENCE.

Obtaining goods by false pretences, contrary to section 88 of the Larceny Act, 1861.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, with intent to defraud, obtained from *S.P.* five yards of cloth by falsely pretending that he, the said *A.B.*, was a servant to *J.S.*, and that he, the said *A.B.*, had then been sent by the said *J.S.*, to *S.P.*, for the said cloth, and that he, the said *A.B.*, was then authorised by the said *J.S.* to receive the said cloth on behalf of the said *J.S.*

13.

## STATEMENT OF OFFENCE.

Conspiracy to defraud.

## PARTICULARS OF OFFENCE.

*A.B.* and *C.D.* on the \_\_\_\_\_ day of \_\_\_\_\_ and on divers days between that day and the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, conspired together with intent to defraud by means of an advertisement inserted by them, the said *A.B.* and *C.D.*, in the *H.S.* newspaper, falsely representing that *A.B.* and *C.D.* were then carrying on a genuine business as jewellers at \_\_\_\_\_ in the county of \_\_\_\_\_ and that they were then able to supply certain articles of jewellery to whomsoever would remit to them the sum of two pounds.

14.

## STATEMENT OF OFFENCE.

## First Count.

Arson, contrary to section 2 of the Malicious Damage Act, 1861.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, maliciously set fire to a dwelling-house, one *F.G.* being therein.

## STATEMENT OF OFFENCE.

## Second Count.

Arson, contrary to section 3 of the Malicious Damage Act, 1861.

## PARTICULARS OF OFFENCE.

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, in the county of \_\_\_\_\_, maliciously set fire to a house with intent to injure or defraud.



15.

STATEMENT OF OFFENCES.

A.B., arson, contrary to section 3 of the Malicious Damage Act, 1861;  
C.D., accessory before the fact to same offence.

PARTICULARS OF OFFENCES.

A.B., on the                      day of                      , in the county  
of                      , set fire to a house with intent to injure or  
defraud.

C.D., on the same day, in the county of  
did counsel, procure, and command the said A.B. to commit the said  
offence.

16.

STATEMENT OF OFFENCE.

First Count.

Offence under section 35 of the Malicious Damage Act, 1861.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county  
of                      , displaced a sleeper belonging  
to the Great Western Railway with intent to obstruct, upset, over-  
throw, injure, or destroy any engine, tender, carriage or truck using  
the said railway.

STATEMENT OF OFFENCE.

Second Count.

Obstructing railway, contrary to section 36 of the Malicious Damage  
Act, 1861.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county  
of                      , by unlawfully displacing a sleeper belonging  
to the Great Western Railway did obstruct or cause to be obstructed  
an engine or carriage using the said railway.

17.

STATEMENT OF OFFENCE.

Damaging trees, contrary to section 22 of the Malicious Damage Act,  
1861.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county  
of                      , maliciously damaged an oak tree there growing.

A.B. has been twice previously convicted of an offence under  
section 22 of the Malicious Damage Act, 1861, namely, at  
on the                      day of                      , and at  
on the                      day of                      .

18.

STATEMENT OF OFFENCE.

First Count.

Forgery, contrary to section 2 (1) (a) of the Forgery Act, 1913.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county  
of                      , with intent to defraud, forged a certain will  
purporting to be the will of C.D.

STATEMENT OF OFFENCE.

Second Count.

Uttering forged document, contrary to section 6 (1) (2) of the Forgery  
Act, 1913.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county  
of                      , uttered a certain forged will purporting to  
be the will of C.D., knowing the same to be forged and with intent  
to defraud.

19.

STATEMENT OF OFFENCE.

Uttering counterfeit coin, contrary to section 9 of the Coinage  
Offences Act, 1861.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , at the public-  
house called "The Red Lion," in the county of                      ,  
uttered a counterfeit half-crown, knowing the same to be counterfeit.

20.

STATEMENT OF OFFENCE.

Uttering counterfeit coin, contrary to section 12 of the Coinage  
Offences Act, 1861.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , at a public-  
house called "The Red Lion," in the county of                      ,  
uttered a counterfeit sovereign, knowing the same to be counterfeit.

A.B. has been previously convicted of a misdemeanour under section  
9 of the Coinage Offences Act, 1861, on the                      day  
of                      at                      .

21.

STATEMENT OF OFFENCE.

Perjury, contrary to section (1) (i) of the Perjury Act, 1911.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county  
of                      , being a witness upon the trial of an action in  
the Chancery Division of the High Court of Justice in England, in  
which one                      , was plaintiff, and one                      ,  
was defendant, knowingly falsely swore that he saw one, M.N., in the  
street called the Strand, London, on the                      day of                      .

22.

STATEMENT OF OFFENCE.

Libel.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county  
of                      , published a defamatory libel concerning  
E.F., in the form of a letter [book, pamphlet, picture, or as the case  
may be].  
[Innuendo should be stated where necessary.]

23.

STATEMENT OF OFFENCE.

First Count.

Publishing obscene libel.

PARTICULARS OF OFFENCE.

E.M., on the                      day of                      , in the county  
of                      , sold, uttered, and published and caused or procured  
to be sold, uttered, and published an obscene libel the particulars of  
which are deposited with this indictment.

[Particulars to specify pages and lines complained of where necessary,  
as in a book.]

STATEMENT OF OFFENCE.

Second Count.

Procuring obscene libel [or thing] with intent to sell or publish.

PARTICULARS OF OFFENCE.

E.M., on the                      day of                      , in the county  
of                      , procured an obscene libel [or thing], the particulars  
of which are deposited with this indictment, with intent to sell, utter  
or publish such obscene libel [or thing].

24.

STATEMENT OF OFFENCES.

A.B., undischarged bankrupt obtaining credit contrary to section  
155 (a) of the Bankruptcy Act, 1914;

C.D., being accessory to same offence.

PARTICULARS OF OFFENCES.

A.B., on the                      day of                      , in the county  
of                      , being an undischarged bankrupt, obtained credit  
to the extent of twelve pounds from H.S. without informing the said  
H.S. that he then was an undischarged bankrupt.

C.D. at the same time and place did aid, abet, counsel, and procure  
A.B. to commit the said offence.

25.

STATEMENT OF OFFENCE.

First Count.

Falsification of accounts, contrary to section 1 of Falsification of  
Accounts Act, 1875.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county  
of                      , being clerk or servant to C.D., with intent  
to defraud, made or concurred in making a false entry in a cash book  
belonging to the said C.D., his employer, purporting to show that on  
the said day £100 had been paid to L.M.

STATEMENT OF OFFENCE.

Second Count.

Same as first count.

PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county  
of                      , being clerk or servant to C.D., with intent  
to defraud, omitted or concurred in omitting from or in a cash book be-  
longing to the said C.D., his employer, a material particular, that is  
to say, the receipt on the said day of £50 from H.S.

## 25.

## STATEMENT OF OFFENCE.

## First Count.

Fraudulent conversion of property, contrary to section 1 (1) (a) of Larceny Act, 1901.

## PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county of                      , fraudulently converted to his own use and benefit certain property, that is to say, £100 entrusted to him by H.S., in order that he, the said A.B., might retain the same in safe custody.

## STATEMENT OF OFFENCE.

## Second Count.

Fraudulent conversion of property, contrary to section 1 (1) (b) of Larceny Act, 1901.

## PARTICULARS OF OFFENCE.

A.B., on the                      day of                      , in the county of                      , fraudulently converted to his own use and benefit certain property, that is to say, the sum of £200 received by him for and on account of L.M.

## SECOND SCHEDULE.

## [Section 9.]

## ENACTMENTS REPEALED.

Session and Chapter.	Short Title	Extent of Repeal.
5 Geo. 4. c. 84	The Transportation Act, 1824	Section twenty-three.
7 Geo. 4. c. 16	The Chelsea and Kilmainham Hospitals Act, 1826	Section thirty-five from "and in all indictments" to the end of the section.
7 Geo. 4. c. 46	The Country Bankers Act, 1826	Section nine from "and in all indictments" down to "crime, or offence."
7 Geo. 4. c. 64	The Criminal Law Act, 1826	Sections fourteen, fifteen, sixteen, eighteen and nineteen.
7 & 8 Geo. 4. c. 28	The Criminal Law Act, 1827	Section eleven from "and in an indictment" to "describing the previous felony."
5 & 6 Will. 4. c. 69	The Union and Parish Property Act, 1835	In section seven the words "and indictment."
11 & 12 Vict. c. 12	The Treason Felony Act, 1848	Section five.
11 & 12 Vict. c. 46	The Criminal Procedure Act, 1848	The whole Act so far as unrepealed.
12 & 13 Vict. c. 45	The Quarter Sessions Act, 1849	Section ten.
12 & 13 Vict. c. 103	The Poor Law Amendment Act, 1849	Section fifteen from "and shall be so" to the end of the section.
14 & 15 Vict. c. 100	The Criminal Procedure Act, 1851	Sections one, two, three, five, seven, twenty-three, twenty-four, and twenty-five.
19 & 20 Vict. c. 54	The Grand Juries Act, 1856	In section one the words "and the name of every witness examined or intended to be so examined shall be endorsed on such bill of indictment and the foreman of such grand jury shall write his initials against the name of each witness so sworn and examined touching such bill of indictment."
24 & 25 Vict. c. 96	The Larceny Act, 1861	Section five; section twenty-eight, from "and in any indictment" to the end of the section; section seventy-one; in section seventy-four the words "and in either case to lay the property in the owner or person letting to hire"; section eighty-eight from "it shall be sufficient" to "of the chattel, money, or valuable security; and"; and section one hundred and sixteen from the beginning of the section to "offences; and"

Session and Chapter.	Short Title.	Extent of Repeal.
24 & 25 Vict. c. 97	The Malicious Damage Act, 1861	Section sixty, down to "alleging an intent to injure or defraud any particular person; and"
24 & 25 Vict. c. 98	The Forgery Act, 1861	Sections forty-two and forty-three, and section forty-four down to "any particular person; and"
24 & 25 Vict. c. 99	The Coinage Offences Act, 1861	Section thirty-seven from "it shall be sufficient" to "conviction for the previous offence; and"
24 & 25 Vict. c. 100	The Offences Against the Person Act, 1861	Section six.
26 & 27 Vict. c. 29	The Corrupt Practices Prevention Act, 1863	Section six, down to "require; and"
30 & 31 Vict. c. 35	The Criminal Law Amendment Act, 1867	In section one the word "now."
32 & 33 Vict. c. 62	The Debtors Act, 1869	Section nineteen.
38 & 39 Vict. c. 24	The Falsification of Accounts Act, 1875	Section two.
39 & 40 Vict. c. 36	The Customs Consolidation Act, 1876	Section twenty-nine from "and in any information" to the end of the section.
46 & 47 Vict. c. 3	The Explosive Substances Act, 1883	Subsection (2) of section seven.
50 & 51 Vict. c. 71	The Coroners Act, 1887	In paragraph (2) of section eighteen the words "except in the case of murder or manslaughter."
51 & 52 Vict. c. 64	The Law of Libel Amendment Act, 1888	Section seven.
61 & 62 Vict. c. 60	The Inebriates Act, 1898	In subsection (2) of section one the words "in any indictment under this section, it shall be sufficient, after charging the offence, to state that the offender is a habitual drunkard."
8 Edw. 7. c. 48	The Post Office Act, 1908	Section seventy-three so far as respects indictments.
8 Edw. 7. c. 59	The Prevention of Crime Act, 1908	Subsection (3) of section ten.

## CHAPTER 91.

## MIDWIVES (SCOTLAND) ACT, 1915.

An Act to secure the better training of Midwives in Scotland, and to regulate their practice.

[23rd December, 1915.]

## CHAPTER 92.

## JUDICIAL COMMITTEE ACT, 1915.

An Act to enable the Judicial Committee of the Privy Council to sit in more than one Division at the same time.

[23rd December, 1915.]

Be it enacted, &c. :-

1. Power of Judicial Committee of the Privy Council to sit in more than one division at the same time.-(1) The Judicial Committee of the Privy Council may, subject to the approval of the Lord Chancellor and the Lord President of the Council, sit in more than one division at the same time, and in such case anything which may be done to, by or before the Judicial Committee may be done to, by or before any such division of the Judicial Committee.

(2) The power of His Majesty in Council to make rules as to the practice and procedure before the Judicial Committee shall include the power to make orders for the constituting of divisions and the holding of divisional sittings of the Judicial Committee.

2. Short title.] This Act may be cited as the Judicial Committee Act, 1915.



# CHAPTER 93.

## WAR LOAN (SUPPLEMENTAL PROVISIONS) ACT, 1915.

An Act to make provision, in connection with Loans raised for the purposes of the present War, for the establishment of a Post Office stock register, and as to stock inscribed in that register, and to make certain amendments, in connection with such Loans and generally in connection with War Finance, in the Law relating to Savings Banks, Friendly Societies, Trade Unions, and otherwise.  
(23rd December, 1915.)

Be it enacted, &c. :—

**1. Establishment of Post Office stock register.**—(1) The Treasury may provide for the establishment of a Post Office stock register (in this Act referred to as "the register"), and may direct that any four and a half per cent. War Loan Stock, 1925-1945, or any other stock issued in connection with any loan raised for the purposes of the present war, which is not inscribed in the names of individual holders in the books of the Bank of England or the Bank of Ireland, shall be inscribed in the register.

(2) The Treasury, in conjunction with the Postmaster-General, and in conjunction with the National Debt Commissioners so far as any regulations relate to those Commissioners, may make regulations with respect to the keeping of the register, and the stock required to be inscribed therein, and in particular with respect to—

(a) investments in and sales of any such stock and the receipt and payment of dividends thereon; and

(b) the manner in which and the conditions subject to which stock may be transferred either from the name of one holder inscribed on the register to that of any other person so inscribed or to be inscribed, or from the register to the books of the Bank of England or the Bank of Ireland, and vice versa; and

(c) the commissions and fees payable in respect of dealings in stock inscribed in the register; and

(d) the maximum amount of stock which may be inscribed in the register in any one holding in any one year, or at any one time, and the exceptions which are to be allowed from any such limits in the case of friendly societies, trade unions, or other similar bodies.

(3) Regulations made under this Act may provide for the total amount of stock inscribed in the register being held by the National Debt Commissioners and inscribed in their names in the books of the Bank of England, and for the application, with such modifications as appear necessary or expedient, to stock inscribed in the register, or to bearer bonds issued under this Act, of any of the provisions of the National Debt Act, 1870 [33 & 34 Vict. c. 71], and of any Act, regulation or warrant relating to savings banks, and may contain such consequential and supplemental provisions as appear necessary or expedient for giving full effect to the regulations.

**2. Issue through Post Office of bearer bonds.**—Regulations made under this Act may provide, in connection with any stock inscribed in the register, for the issue through the Post Office of bearer bonds for such amounts as may be provided by the regulations, with coupons annexed entitling the bearer of the coupons to the dividends on the stock.

**3. Income tax on stock inscribed in the register.**—The interest on any stock inscribed in the register which does not exceed the nominal amount of two hundred pounds shall be paid without deduction of income tax; but any such interest shall be accounted for and charged to income tax under the third case of Schedule D, subject, however, to any provisions of the Income Tax Acts with respect to exemptions or abatements.

**4. Settlement of disputes.**—(1) If any dispute arises between the Postmaster-General, or the trustees of any savings bank, and the holder of any stock inscribed in the register, or any person claiming to be entitled to any such stock, the matter in dispute shall be referred in writing to the Chief Registrar of Friendly Societies.

(2) On any such reference being made, the Chief Registrar may proceed ex parte on notice in writing sent by post to the Postmaster-General or trustees, and may inspect the register, and may administer oaths to any witnesses appearing before him; and his award on the matter in dispute shall be final and binding on all parties.

(3) In the application of this section to Scotland and Ireland, the assistant registrar for Scotland or Ireland, respectively, shall be substituted for the Chief Registrar of Friendly Societies.

**5. Regulations as to loans raised through the Post Office.**—Where any money which may be raised under the War Loan Act, 1915 [5 & 6 Geo. 5, c. 55], is raised through the Post Office, the Treasury may make regulations as to the manner in which and conditions under which the money may be raised, and may by those regulations apply any provisions of any Act, including this Act, relating to deposits in savings banks, with such modifications as appear necessary or expedient.

**6. Regulations to be laid before Parliament.**—Any regulations made under this Act shall be laid before each House of Parliament as soon as may be.

**7. Power to remove or alter temporarily limit on savings banks deposits.**—(1) The Treasury may, by order, direct that any provisions of any Act by which a limit is imposed on the amount which may be deposited in savings banks shall for such time (not being longer than the duration of the present war and a period of six months thereafter) and subject to such conditions as may be specified in the order, cease to have effect, or be modified to such an extent as may be specified in the order.

(2) Where any such order is made, the amount (if any) by which the deposit at the time when the order ceases to have effect of any person affected by the order exceeds the deposit of that person at the time when the order was made, shall, as from the time when the order ceases to have effect, be disregarded in calculating, for the purposes of any limit on the total amount which may be deposited, the amount deposited by that person.

**8. Power of Public Trustee to hold securities of friendly societies, &c.**—(1) Notwithstanding anything in any Act to the contrary, any part of the funds of any registered friendly society or any branch thereof, or of any registered trade union or society approved for the purposes of the National Insurance Act, 1911 [1 & 2 Geo. 5, c. 55], and any stocks, shares, or securities held by or on behalf of any such society, union, or branch, may, if the Public Trustee agrees to such transfer, and rules of the society, union, or branch are made for the purpose, be transferred to the Public Trustee.

(2) The Public Trustee shall invest, in accordance with the rules, any funds so transferred to him, and shall pay the interest on any stocks, shares, or securities acquired by or transferred to him in pursuance of this section to the trustees of the society, union, or branch; and shall, if and when so required by those trustees, transfer the capital of the stocks, shares, or securities to them, or realise the same and transfer the proceeds to them.

(3) Pending the making of rules, any War Loan Stock, 1925-1945, held by or on behalf of any such society, union, or branch may, if the Public Trustee agrees to such transfer, be transferred to him as though rules were made for the purpose.

(4) The Public Trustee shall be completely exonerated from any liability in relation to any stock, shares, or securities held by him in pursuance of this section, and no action shall lie against the Public Trustee in respect of any such stock, shares, or securities, provided that he acts in accordance with the provisions of this section.

(5) This section shall be deemed to have had effect as from the second day of July, nineteen hundred and fifteen.

(6) This section shall not apply to Scotland.

**9. Investment of funds of friendly societies, &c., in Scotland.**—(1) Notwithstanding anything in any enactment to the contrary, it shall be lawful, when provision is made thereby by the rules of any friendly society or trade union registered in Scotland, or of any society approved by the Scottish Insurance Commissioners for the purpose of the National Insurance Act, 1911, or of any branch of such society or union, for any funds of such society or union or branch which may lawfully be invested in stock issued in connection with any loan raised for the purposes of the present war, to be invested in such stock in the name of the "Accountant of Court," provided that pending the making of rules so providing it shall be lawful for the executive body of such society, union, or branch to invest any such funds in the said stock in the name of the "Accountant of Court" as if such provision were made by the rules.

(2) When any funds of such society, union, or branch are so invested in any such stock in the name of the "Accountant of Court," the exercise of any power or discretion exercisable by the trustees or executive body of such society, union, or branch in relation to such funds, shall remain vested in such trustees or executive body, and the Accountant of Court shall concur in and perform all acts necessary to enable the exercise of any such power or discretion by the trustees or executive body, and shall not be liable for any act or default on the part of such trustees or executive body.

(3) All sums payable by way of interest or dividend on such investment or in respect of the sale or realisation of the same, shall when received by the Accountant of Court be paid over by him to the trustees or executive body of such society, union, or branch, or to such person or into such bank to the credit of such person as the trustees or executive body may direct, and on such payment the Accountant of Court shall be exonerated from seeing to the application of such sums, and shall not be answerable for any loss or misapplication thereof.

**10. Amount which may be paid in any one day by National Debt Commissioners to savings bank.**—The limit of ten thousand pounds imposed by section twenty-seven of the Trustee Savings Banks Act, 1863 [26 & 27 Vict. c. 87], on the amount for which the National Debt Commissioners may issue orders for payment on any one day on account of the same savings bank may be exceeded if it appears to the National Debt Commissioners that, owing to any special circumstances existing at the time, it is desirable that the limit should be exceeded.

**11. Short title.**—This Act may be cited as the War Loan (Supplemental Provisions) Act, 1915, and so far as it relates to Post Office Savings Banks may be cited with the Post Office Savings Banks Acts, 1861 to 1908, and so far as it relates to trustee savings banks may be cited with the Trustee Savings Banks Acts, 1861 to 1904.

## CHAPTER 94.

## EVIDENCE (AMENDMENT) ACT, 1915.

An Act to amend the Law of Evidence.

[23rd December, 1915.]

Be it enacted, &amp;c. :—

1. *Evidence of depositions of witnesses engaged on naval or military service.*—If, during the continuance of the present war, upon the trial of a person accused of an indictable offence, it is proved that any person whose deposition has been duly taken before the justice or justices by whom the accused was committed for trial is unable to attend the trial, having regard to the necessities of the public service, by reason of being actively engaged in the naval or military service of His Majesty, and if also it is proved that such deposition was taken in the presence of the person so accused, and that (except in the case of a deposition by a witness on behalf of the accused) he or his counsel or attorney had a full opportunity of cross-examining the witness, then, if such deposition purports to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence at the trial without further proof thereof unless it is proved that such deposition was not in fact signed by the justice purporting to sign the same :

Provided that no deposition shall be read in evidence under the powers of this section save with the consent of the court before which the trial takes place.

2. *Power to give in evidence statements of witnesses at preliminary investigations.*—(1) Where a person is tried either by court-martial or by a civil court with a jury (including as respects Scotland the High Court of Justiciary) for any offence against any regulations made under the Defence of the Realm Consolidation Act, 1914 [5 & 6 Geo. 5, c. 8], as amended by any subsequent enactment, and the charge has previously been investigated and a summary of evidence taken by the proper military authority in accordance with the provisions of the Army Act and the rules of procedure made thereunder, then, on any such trial—

(a) the evidence on oath of any witness which is proved to have been taken down in writing at such investigation, in accordance with those rules, and purports to be signed or attested and witnessed in accordance therewith, may, if it is further proved that the witness is dead, or so ill as not to be able to travel, or unable to attend, having regard to the necessities of the public service, by reason of his being actively engaged in the naval or military service of His Majesty, be read as evidence without further proof thereof, unless it is proved that the evidence was not in fact signed or attested and witnessed in accordance with those rules; and

(b) any statement of the accused added in writing in accordance with those rules may, if necessary, be given in evidence against him without further proof thereof.

and a statement appended to the summary purporting to be signed by the officer before whom the summary was taken, that the evidence contained in the summary was taken in accordance with the said rules shall be evidence of the fact so stated, and that officer shall be deemed to be the proper military authority to take the summary, unless the contrary is proved : Provided that no evidence shall be received under the powers of this section save with the consent of the court before which the trial takes place.

(2) For removing doubts it is hereby declared that the evidence of any witness on any such investigation may be taken on oath, and the officer conducting the investigation has power to administer oaths for the purpose.

3. *Substitution of imprisonment for sentence of death.*—Where any person has been convicted of an offence punishable by death upon evidence solely contained in depositions which have been read in evidence at the trial under the powers conferred by this Act, the punishment of death shall not be inflicted, but the court may pass such sentence of imprisonment or penal servitude as it may think just.

4. *Proof of naval or military service.*—A certificate signed by a secretary or assistant secretary of the Admiralty or Army Council that a person is unable to attend, having regard to the necessities of the public service, by reason of his being actively engaged in the naval or military service of His Majesty, shall for the purposes of this Act be conclusive evidence of the fact so certified, and a certificate purporting to be signed by such a secretary or assistant secretary shall be deemed to be such a certificate as aforesaid unless the contrary is proved.

5. *Application of documentary Acts to Army Council and Secretary for Scotland.*—The Documentary Evidence Act, 1868 [31 & 32 Vict. c. 37], as amended by the Documentary Evidence Act, 1882 [45 & 46 Vict. c. 9], shall apply to the Army Council as if the Army Council was mentioned in the first column of the Schedule to the first-mentioned Act, and as if two members of the Army Council, or the Secretary to the Army Council, or any person authorised by the Army Council to act on their behalf, were mentioned in the second column of that Schedule, and shall apply to the Secretary for Scotland as if the Secretary for Scotland were mentioned in the first column of the said Schedule and as if the Secretary for Scotland or an under secretary or assistant under secretary for Scotland were mentioned

in the second column of that Schedule, and shall apply to the Local Government Board for Ireland as if the Local Government Board for Ireland were mentioned in the first column of the said Schedule, and as if a commissioner of the Local Government Board for Ireland or a secretary or assistant secretary of the said Board were mentioned in the second column of that Schedule.

6. *Short title.*—This Act may be cited as the Evidence (Amendment) Act, 1915.

## CHAPTER 95.

## EDUCATION (SMALL POPULATION GRANTS) ACT, 1915.

An Act to suspend in connection with the present War the Grants payable under paragraph (2) of section nineteen of the Elementary Education Act, 1876, and the Education Code (1890) Act, 1890, and to provide for the payment of other Grants in lieu thereof.

[23rd December, 1915.]

Be it enacted, &amp;c. :—

1. *Provisions as to small population grants.*—(1) The Parliamentary grants (hereinafter referred to as small population grants) payable under paragraph (2) of section nineteen of the Elementary Education Act, 1876 [39 & 40 Vict. c. 79, s. 19], and the Education Code (1890) Act, 1890 [53 & 54 Vict. c. 22], as amended by any subsequent enactments, shall be suspended in respect of the period hereinafter mentioned, and in lieu thereof there shall be paid out of moneys provided by Parliament to the several local education authorities in respect of each year ending the thirtieth day of September during the period hereinafter mentioned, a grant equal to the aggregate amount (if any) of the sums received by the authority by way of small population grants in respect of schools in its area for the school years of those schools which ended after the thirtieth day of September nineteen hundred and fourteen and before the first day of October nineteen hundred and fifteen.

Such grant as aforesaid shall be paid in such instalments and at such times as will secure that a local education authority shall receive sums on account of the grant corresponding as nearly as may be to those received by the authority in respect of the last small population grants.

(2) The period hereinbefore referred to shall—

(a) as respects the grant payable to local education authorities under this section, be the period commencing on the first day of October, nineteen hundred and fifteen, and ending on the thirtieth day of September next after the termination of the present war, or on any subsequent thirtieth day of September (not being more than three years later), as the Board of Education may by minute to be laid before Parliament determine; and

(b) as respects the suspension of the small population grant, be, in relation to each school, the period commencing at the date when the school year current on the said first day of October commenced, and continuing for the same number of years as are comprised within the period mentioned in paragraph (a).

2. *Short title.*—This Act may be cited as the Education (Small Population Grants) Act, 1915.

## CHAPTER 96.

## GOVERNMENT WAR OBLIGATIONS ACT, 1915.

An Act to make provision with respect to Obligations incurred by or on behalf of His Majesty's Government for the purposes of the present War or in connection therewith.

[23rd December, 1915.]

\* Be it enacted, &amp;c. :—

1. *Extensions of the Government War Obligations Act, 1914.*—(1) Section one of the Government War Obligations Act, 1914 [5 & 6 Geo. 5, c. 11] (in this Act referred to as the principal Act), which relates to the provision of money for the fulfilment of Government war obligations incurred before the passing of that Act, shall be extended so as to include the provision in the like manner of money for the fulfilment of any Government war obligations incurred before the passing of this Act.

(2) Section three of the principal Act, which makes provision as to the validity of action taken in certain cases by associations or bodies of persons approved by the Board of Trade, shall apply to action taken for the purpose of carrying out any Government scheme in connection with the present war for the grant of compensation in respect of persons killed or injured on merchant ships as the result of hostilities, in like manner as it applies to action taken for the purpose of carrying out any such scheme for the relief of dependents of persons on insured ships.

(3) The schedule to the principal Act, which sets out the Government war obligations, shall be extended so as to include obligations incurred in connection with the present war in respect of payments—

(a) for the relief of dependents of persons on any merchant ship or fishing vessel;

(b) for compensation in respect of persons killed or injured on any merchant ship or fishing vessel;

(c) on contracts of insurance against war risks of the personal effects of masters, officers, seamen, and fishermen; and

(d) in respect of aircraft and bombardment insurance contracts; (so far as provision is not made for those payments by the application of premiums or otherwise) or in respect of—



(e) any arrangements for restricting the supply of any commodities to the enemy;

(f) any arrangements for the regulation of the foreign exchanges;

(g) any scheme in connection with any such last-mentioned arrangements for enabling securities to be placed at the disposal of the Treasury (in this Act referred to as a Treasury securities deposit scheme); and

(h) any exchange of obligations with any Powers allied with His Majesty in the present war.

**2. Provision with respect to deposit of securities with the Treasury.**—

(1) Securities may be deposited with the Treasury or given to the Treasury in exchange for Government securities, for the purpose of, and in accordance with the conditions of, any Treasury securities deposit scheme, notwithstanding that those securities are subject to any trust, and notwithstanding any provisions of the trust, whether arising by deed, Act of Parliament, or otherwise; and any persons holding any such securities are hereby expressly authorized so to deposit the securities or give them in exchange in accordance with any such scheme, and shall not be liable for any loss arising therefrom, and, in the case of a company, or body of persons, are so authorized notwithstanding anything in their constitution.

(2) Any deposit receipts or documents of a like nature given in respect of securities so deposited, and any Government securities taken in exchange for securities exchanged, shall be held by the persons depositing the securities or giving them in exchange subject to the same trusts as the securities deposited or given in exchange, as the case may be.

(3) Any person having power to invest in, hold, advance money on, or deal with securities represented by any such deposit receipt may invest in, hold, advance money on, and deal with the deposit receipts in the same manner as the securities which the receipts represent, and any person taking Government securities in exchange in pursuance of this section may hold and deal with those securities as if they were the securities given in exchange.

Where the Treasury so direct as respects any class of transaction for the purpose of any Treasury securities deposit scheme or any special transaction for the purpose of any such scheme, stamp duty shall not be payable in respect of that class of transaction or transaction; and a deposit with the Treasury, or sale to the Treasury, or exchange with the Treasury, for the purpose of any such scheme of a security transferable by delivery shall not, for the purpose of the Stamp Act, 1891 [54 & 55 Vict. c. 39], and the Acts amending the same, be deemed to be a negotiation of the security.

(4) None of the provisions of the House of Commons (Disqualification) Act, 1782 [22 Geo. 3. c. 45], or the House of Commons (Disqualifications) Act, 1801 [41 Geo. 3. c. 52], shall be construed so as to extend to any deposit of securities with the Treasury or any exchange of securities with or sale of securities to the Treasury for the purpose of and in accordance with the conditions of any Treasury securities deposit scheme.

**3. Provision with respect to compensation for persons injured on merchant ships or fishing vessels.** For the purposes of section two of the National Insurance (Part I. Amendment) Act, 1915 [5 & 6 Geo. 5, c. 29], any scheme for compensation in respect of persons injured on any merchant ship or fishing vessel in connection with which any Government obligations are incurred shall have the same effect as if it were an Act of Parliament.

**4. Short title.** This Act may be cited as the Government War Obligations Act, 1915, and the principal Act and this Act may be cited together as the Government War Obligations Acts, 1914 and 1915.

**CHAPTER 97.**

**INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915.**

An Act to restrict, in connection with the present War, the Increase of the Rent of Small Dwelling-houses and the Increase of the Rate of Interest on, and the Calling in of, Securities on such Dwelling-houses.

[23rd December, 1915.]

Be it enacted, &c. :—

**1. Restriction on raising rent or rate of mortgage interest.**—(1) Where the rent of a dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the commencement of the present war, or is hereafter during the continuance of this Act, increased above the standard rent or the standard rate of interest as hereinafter defined, the amount by which the rent or interest payable exceeds the amount which would have been payable had the increase not been made shall, notwithstanding any agreement to the contrary, be irrecoverable :

Provided that—

(i) This subsection shall not apply to any rent or mortgage interest which accrued due before the twenty-fifth day of November, nineteen hundred and fifteen; and

(ii) Where the landlord has since the commencement of the present war incurred, or during the continuance of this Act incurs, expenditure on the improvement or structural alteration of a dwell-

ing-house (not including expenditure on decoration or repairs), an increase of rent at a rate not exceeding six per cent. per annum on the amount so expended shall not be deemed to be an increase for the purposes of this Act; and

(iii) Any transfer to a tenant of any burden or liability previously borne by the landlord shall for the purposes of this Act be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which a dwelling-house is held are on the whole more favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this Act, and if any question arises under this proviso the question shall be determined by the county court, whose decision shall be final and conclusive; and

(iv) Where the landlord pays the rates chargeable on, or which but for the enactments relating to compounding would be chargeable on, the occupier of any dwelling-house, an increase of the rent of the dwelling-house shall not be deemed to be an increase for the purposes of this Act if the amount of the increase does not exceed any increase in the amount for the time being payable by the landlord in respect of such rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the third day of August, nineteen hundred and fourteen, and for the purposes of this proviso the expression "rates" includes water rents and charges; and

(v) Where the rate of mortgage interest has been increased in compliance with, or in consequence of, a notice in writing demanding either repayment of the mortgage or an increased rate of interest given prior to the fourth day of August, nineteen hundred and fourteen, such increase shall not be deemed to be an increase for the purposes of this Act; and

(vi) Wherever an increase of rent is by this Act permitted, no such increase shall be due or recoverable until the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, accompanied—

(a) where the increase of rent is on account of such expenditure as is mentioned in proviso (ii) to this subsection, by a statement of the improvements or alterations effected and of their cost; and

(b) where the increase of rent is on account of an increase in rates, by a statement showing particulars of the increased amount charged in respect of rates on the dwelling-house; and

(c) where such a notice has been served on any tenant the increase may be continued without service of any fresh notice on any subsequent tenant.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which this Act applies require the payment of any fine, premium, or other like sum in addition to the rent, and where any such payment has been made in respect of any such dwelling-house after the twenty-fifth day of November, nineteen hundred and fifteen, then the amount shall be recoverable by the tenant by whom it was made from the landlord, and may without prejudice to any other method of recovery be deducted from any rent payable by him to the landlord, but this provision shall not apply to any payment under an agreement entered into before the fourth day of August, nineteen hundred and fourteen.

(3) No order for the recovery of possession of a dwelling-house to which this Act applies or for the ejectment of a tenant therefrom shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this Act and performs the other conditions of the tenancy, except on the ground that the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, or on some other ground which may be deemed satisfactory by the court making such order, and where such order has been made but not executed before the passing of this Act the court by which the order was made may, if it is of opinion that the order would not have been made if this Act had been in operation at the date of the making of the order, rescind or vary the order in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) It shall not be lawful for any mortgagee under a mortgage to which this Act applies, during the continuance of this Act, and so long as interest at the standard rate is paid and is not more than twenty-one days in arrear, and the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed, and so long as the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance, to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured :

Provided that this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exercisable by a mortgagee who was at the twenty-fifth day of

November, nineteen hundred and fifteen, a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage :

Provided also that if, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorize him to call in and enforce the same, and thereupon this subsection shall not apply to such mortgage.

**2. Interpretation and application.]—**(1) For the purposes of this Act except where the context otherwise requires :—

(a) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August, nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let :

(b) The expression "standard rate of interest" means in the case of a mortgage in force on the third day of August, nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest :

(c) The expression "rateable value" means the rateable value on the third day of August, nineteen hundred and fourteen, or, in the case of a house or part of a house first assessed after that date, the rateable value at which it was first assessed :

(d) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor :

(e) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 [38 & 39 Vict. c. 87] and 1897 [60 & 61 Vict. c. 65].

(2) This Act shall apply to a house or a part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where either the annual amount of the standard rent or the rateable value of the house or part of the house does not exceed—

(a) in the case of a house situate in the metropolitan police district, including therein the city of London, thirty-five pounds ;

(b) in the case of a house situate in Scotland, thirty pounds ; and

(c) in the case of a house situate elsewhere, twenty-six pounds ;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies : Provided that this Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(3) Where, for the purpose of determining the standard rent or rateable value of a dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed or the rateable value of the property in which that dwelling-house is comprised, a county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein except that it shall not apply—

(a) To any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage, or

(b) to an equitable charge by deposit of title deeds or otherwise.

(5) Where this Act has become applicable to any dwelling-house or any mortgage thereon it shall continue to apply thereto whether or not the dwelling-house continues to be a dwelling-house to which this Act applies.

(6) Where the standard rent payable in respect of any tenancy of a dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house.

**3. Rules as to procedure.]—**The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may by those rules or directions provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

**4. Application to Scotland and Ireland.]—**(1) This Act shall apply to Scotland, subject to the following modifications :—

"Mortgage and incumbrance" mean a heritable security ; "fine" means grassum or consideration other than rent ; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security ; "covenant" means obligation ; "mortgaged property" means the heritable subject or subjects included in a heritable security ; "rateable value" means yearly value according

to the valuation roll ; "rateable value on the third day of August, nineteen hundred and fourteen," means yearly value according to the valuation roll for the year ending fifteenth day of May, nineteen hundred and fifteen ; "assessed" means entered in the valuation roll ; "committed waste" means "wilfully destroyed the property" ; "land" means lands and heritages ; "enactments relating to compounding" include the House-letting and Rating (Scotland) Act, 1911 [1 & 2 Geo. 5, c. 53] ; "rate" means assessment as defined in the last-mentioned Act ; "Lord Chancellor" means the Court of Session ; "rules" means act of sederunt ; and "county court" means the sheriff.

(2) This Act shall apply to Ireland subject to the following modifications :—

(a) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor ;

(b) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891 [54 & 55 Vict. c. 66] ;

(c) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts : Provided that where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may on the application of the landlord or tenant make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act, but not further or otherwise.

**5. Short title and duration.]—**(1) This Act may be cited as the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

(2) This Act shall continue in force during the continuance of the present war and for a period of six months thereafter and no longer, but the expiration of this Act shall not render recoverable any rent or interest which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

## CHAPTER 98.

### TRADING WITH THE ENEMY (EXTENSION OF POWERS) ACT, 1915.

An Act to provide for the Extension of the Restrictions relating to Trading with the Enemy to Persons to whom, though not resident or carrying on Business in Enemy Territory, it is by reason of their Enemy Nationality or Enemy Association expedient to extend such Restrictions. [23rd December, 1915.]

Be it enacted, &c. :—

**1. Power to prohibit trading with persons of enemy nationality, &c.]**

(1) His Majesty may by Proclamation prohibit all persons or bodies of persons, incorporated or unincorporated, resident, carrying on business, or being in the United Kingdom from trading with any persons or bodies of persons not resident or carrying on business in enemy territory or in territory in the occupation of the enemy (other than persons or bodies of persons, incorporated or unincorporated, residing or carrying on business solely within His Majesty's Dominions) wherever by reason of the enemy nationality or enemy association of such persons or bodies of persons, incorporated or unincorporated, it appears to His Majesty expedient so to do, and if any person acts in contravention of any such Proclamation he shall be guilty of a misdemeanour triable and punishable in like manner as the offence of trading with the enemy.

(2) Any list of persons and bodies of persons, incorporated or unincorporated, with whom such trading is prohibited by a Proclamation under this Act may be varied or added to by an Order made by the Lords of the Council on the recommendation of a Secretary of State.

(3) The provisions of the Trading with the Enemy Acts, 1914 and 1915 [5 & 6 Geo. 5, c. 71], and of the Customs (War Powers) (No. 2) Act, 1915, and all other enactments relating to trading with the enemy, shall, subject to such exceptions and adaptations as may be prescribed by Order in Council, apply in respect of such persons and bodies of persons as aforesaid as if for references therein to trading with the enemy there were substituted references to trading with such persons and bodies of persons as aforesaid, and for references to enemies there were substituted references to such persons and bodies of persons as aforesaid, and for references to offences under the Trading with the Enemy Acts, 1914 and 1915, or any of those Acts, there were substituted references to offences under this Act.

(4) For the purposes of this Act a person shall be deemed to have traded with a person or body of persons to whom a Proclamation issued under this Act applies, if he enters into any transaction or does any act with, to, on behalf of, or for the benefit of, such a person or body of persons which if entered into or done with, to, on behalf of, or for the benefit of, an enemy would be trading with the enemy.

**2. Short title.]—**This Act may be cited as the Trading with the Enemy (Extension of Powers) Act, 1915.



**CHAPTER 32.**

**TRADING WITH THE ENEMY (COPYRIGHT) ACT, 1916.**

An Act to make provision with respect to Copyright in works first published or made in an enemy country during the present War.

[10th August, 1916.]

Whereas doubts have arisen with respect to the existence of copyright in works first published or made in an enemy country during the present war, the copyright wherein would, had a state of war not existed, have vested in any person as the first owner thereof by virtue of the application to an enemy country of any Order in Council made under the Copyright Act, 1911 [1 & 2 Geo. 5, c. 46], and it is expedient to make such provision as is hereinafter contained with respect to copyright in such works:

Be it therefore enacted, &c. :-

1. *Vesting in Public Trustee copyright in works published or made in enemy territory.*—Copyright in all such works, whether first published or made after or before the passing of this Act, shall be deemed to vest or to have vested in the Public Trustee in his capacity as Custodian under the Trading with the Enemy Amendment Act, 1914 [5 & 6 Geo. 5, c. 12]; and the Public Trustee shall, subject to regulations made by the Board of Trade, have all such powers, rights, and remedies in relation to the work as such person as aforesaid would, had a state of war not existed, have had; and all copyrights so vested in the Public Trustee, and any money arising from the exercise of his rights as the owner of any such copyright, shall be dealt with by him in like manner as property vested in him under the Trading with the Enemy Amendment Act, 1914, and section five of that Act as amended by any subsequent enactment shall apply accordingly:

Provided that where, before the passing of this Act, any person has taken any action whereby he has incurred expenditure or liability in connection with the reproduction or performance of any such work as aforesaid, the Public Trustee shall, on application for the purpose being made within six months after the passing of this Act, grant to him a licence to reproduce or perform the work on such terms and conditions as, in the opinion of the Public Trustee, are fair and reasonable.

2. *Short title and construction.*—This Act may be cited as the Trading with the Enemy (Copyright) Act, 1916, and shall be construed as one with the Trading with the Enemy Amendment Act, 1914.

**CHAPTER 33.**

**ARMY (COURTS OF INQUIRY) ACT, 1916.**

An Act to amend subsection five of section seventy of the Army Act.

[10th August, 1916.]

Be it enacted, &c. :-

1. *Rules of procedure of courts of inquiry.*—The rules as to the procedure of courts of inquiry under subsection (5) of section seventy of the Army Act may, in cases where the Secretary of State certifies that the evidence of persons who are not subject to military law will be necessary, make provision for compelling such persons to attend as witnesses, to give evidence, and to produce documents before the court, and the rules may for that purpose apply, with the necessary adaptations, section one hundred and twenty-six of the Army Act (which relates to the attendance of witnesses not subject to military law before courts martial); and the rules may further, where the Secretary of State certifies that the evidence before the court is likely to affect the character of persons not subject to military law, provide for the inclusion, as members of the court, of one or more persons, nominated by the Secretary of State, who are not officers.

2. *Short title and duration.*—(1) This Act may be cited as the Army (Courts of Inquiry) Act, 1916.

(2) This Act shall continue in force until the termination of the present war and no longer.

**CHAPTER 34.**

**SPECIAL COMMISSIONS (DARDANELLES AND MESOPOTAMIA) ACT, 1916.**

An Act to constitute Special Commissions to inquire into the origin, inception, and conduct of Operations of War in the Dardanelles and Gallipoli, and into the origin, inception, and conduct of Operations of War in Mesopotamia.

[17th August, 1916.]

Be it enacted, &c. :-

1. *Appointment of Commissioners.*—(1) The following persons, namely,

The Right Honourable the Earl of Cromer, G.C.B., O.M.,  
G.C.M.G., K.C.S.I., C.I.E.,  
The Right Honourable Andrew Fisher,  
The Honourable Sir Thomas Mackenzie, K.C.M.G.,  
Sir Frederick Cawley, Baronet, Member of Parliament,  
James Aron Clyde, Esquire, King's Counsel, Member of Parliament,  
Captain Stephen Lucius Gwynn, Member of Parliament,  
Walter Francis Roch, Esquire, Member of Parliament,  
Admiral of the Fleet Sir William Henry May, G.C.B., G.C.V.O.,  
Field-Marshal Lord Nicholson, G.C.B., and

The Right Honourable Sir William Pickford, Knight, one of the Lords Justices of Appeal.

are hereby appointed Commissioners for the purpose of inquiring into the origin, inception, and conduct of operations of war in the Dardanelles and Gallipoli, including the supply of drafts, reinforcements, ammunition, and equipment to the troops and fleet, the provision for the sick and wounded, and the responsibility of those departments of Government whose duty it has been to minister to the wants of the forces employed in that theatre of war.

(2) The following persons, namely,

The Right Honourable Lord George Francis Hamilton, G.C.S.I.,  
The Right Honourable the Earl of Donoughmore, K.P.,  
Lord Hugh Cecil, Member of Parliament,  
Sir Archibald Williamson, Baronet, Member of Parliament,  
John Hodge, Esquire, Member of Parliament,  
Commander Josiah C. Wedgwood, Member of Parliament,  
Admiral Sir Cyrian Arthur George Bridge, G.C.B., and  
General the Right Honourable Sir Neville Gerald Lyttelton, G.C.B., G.C.V.O.,

are hereby appointed Commissioners for the purpose of inquiring into the origin, inception, and conduct of operations of war in Mesopotamia, including the supply of drafts, reinforcements, ammunition, and equipment to the troops and fleet, the provision for the sick and wounded, and the responsibility of those departments of Government whose duty it has been to minister to the wants of the forces employed in that theatre of war.

2. *Powers of Commissioners.*—(1) The Commissioners appointed under this Act (in this Act referred to as the Commissioners) shall have all such powers, rights, and privileges as are vested in the High Court or in any judge thereof, on the occasion of any action, in respect of the following matters:—

- (a) The enforcing the attendance of witnesses and examining them on oath, affirmation, or otherwise, and the issue of a commission or a request to examine witnesses abroad; and
- (b) The compelling the production of documents; and
- (c) The punishing persons guilty of contempt;

and a summons signed by one or more of the Commissioners may be substituted for and shall be equivalent to any formal process capable of being issued in any action for enforcing the attendance of witnesses and compelling the production of documents.

(2) A warrant of committal to prison issued for the purpose of enforcing the powers conferred by this section shall be signed by one or more of the Commissioners, and shall specify the prison to which the offender is to be committed, but shall not authorise the imprisonment of an offender for a period exceeding three months.

(3) The Commissioners may authorise the representation before them of any person appearing to them to be interested by counsel, or solicitor, or otherwise, if they consider that any injustice would ensue if that person were not so represented.

(4) The Commissioners may act notwithstanding any vacancy in their number, and three shall be a quorum, but the Commissioners may delegate to any two or more of their number their powers of holding sittings for the purpose of making inquiries and taking evidence abroad and any powers in relation thereto.

3. *Discretion to hold proceedings either in public or in private.*—

(1) The Commissioners shall, having regard to the interests of the public and to naval, military, and diplomatic considerations, allow or refuse to allow the public or any portion of the public to be present during any proceedings of the Commissioners: Provided that a full and complete record in shorthand shall be kept of all evidence taken whether in public or in private.

(2) If any person who is present at any proceedings of the Commissioners at which the public or any portion thereof are not allowed to be present discloses, without the authority of the Commissioners, or without proper authority given on behalf of His Majesty, either directly or indirectly, anything that has taken place at those proceedings, he shall be guilty of a misdemeanour, and the Official Secrets Act, 1911 [1 & 2 Geo. 5, c. 28], shall apply as it applies to misdemeanours under section 2 of that Act.

4. *Indemnity to witnesses.*—(1) A person examined as a witness by the Commissioners shall not be excused from producing any document or giving any information on the ground that such document or information is secret or confidential, or is entitled to be withheld under section two of the Official Secrets Act, 1911, or from answering any question put to him, or from producing any document, on the ground that the answer thereto or production thereof may criminate or tend to criminate him, but any answer so given shall not be evidence against that person in any criminal proceeding (including a proceeding by court-martial) at any time thereafter instituted against him, and any document so produced shall not be evidence against him in any such proceeding unless the production of that document could be enforced in those proceedings or evidence of that document could be otherwise obtained in any such proceedings.

(2) Nothing in this section shall apply to the case of proceedings for having given false evidence before the Commissioners, or of having procured, or attempted to procure, the giving of such evidence.

5. *Sittings outside the United Kingdom.*—The Commissioners may

hold sittings outside the United Kingdom, and for the purpose of any such sittings in India, or of anything required to be done in India by or on behalf of the Commissioners, this Act shall have effect as if a High Court or Chief Court in British India were substituted for the High Court.

6. *Reports.*—Any report of the Commissioners and any minority report shall be laid as soon as may be before both Houses of Parliament, and the Commissioners may, if they think fit, make interim reports: Provided that the Commissioners appointed to inquire into the Mesopotamia campaign shall proceed with all possible expedition to inquire with regard to the provision for the sick and wounded, and shall report the result of their inquiries on this matter as soon as they are completed.

7. *Short title.*—This Act may be cited as the Special Commissions (Dardanelles and Mesopotamia) Act, 1916.

### CHAPTER 35.

#### ELEMENTARY EDUCATION (FEE GRANT) ACT, 1916.

An Act to alter the Limitation on the Ages of Children in respect of whom a Fee Grant is payable. [17th August, 1916.]

Be it enacted, &c. :—

1. *Fee grant payable in respect of children of the age of fifteen and upwards.*—The Elementary Education Act, 1891 [54 & 55 Vict. c. 56], which provides for the payment of the fee grant, shall have effect and shall, as from the commencement of every school year current at the passing of this Act, be deemed to have had effect as if the payment of the grant in respect of children of the age of fifteen and upwards were not excluded, and accordingly the words "and under fifteen" wherever they occur in that Act shall be repealed.

2. *Short title and citation.*—This Act may be cited as the Elementary Education (Fee Grant) Act, 1916, and the Education Acts, 1870 to 1914, and this Act may be cited together as the Education Acts, 1870 to 1916.

### CHAPTER 36.

#### FINANCE (EXCHEQUER BONDS) AMENDMENT ACT, 1916.

An Act to amend section fifty-eight of the Finance Act, 1916, with respect to the issue of certain Exchequer Bonds. [17th August, 1916.]

Be it enacted, &c. :—

1. *Amendment of s. 58 of 6 & 7 Geo. 5, c. 24.*—The proviso to section fifty-eight of the Finance Act, 1916, shall not apply to Exchequer bonds issued on or after the second day of August nineteen hundred and sixteen and before the fifth day of October nineteen hundred and sixteen, where the date of repayment of the bonds is expressed to be the fifth day of October nineteen hundred and twenty-one.

2. *Short Title.*—This Act may be cited as the Finance (Exchequer Bonds) Amendment Act, 1916.

### CHAPTER 37.

#### GOVERNMENT OF INDIA (AMENDMENT) ACT, 1916.

An Act to amend certain enactments relating to the government of India, and to remove doubts as to the validity of certain Orders in Council made for India. [23rd August, 1916.]

Be it enacted, &c. :—

1. *Elections and nominations for legislative councils.*—(1) In section sixty-three of the Government of India Act, 1915 [5 & 6 Geo. 5, c. 61.] (in this Act referred to as "the principal Act"), shall be inserted the following sub-sections :—

"(6A) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.

"(6B) Subject to any rules made under this section, any person who is a ruler or subject of any state in India shall be eligible to be nominated a member of a legislative council."

(2) In sections seventy-four and seventy-six of the principal Act corresponding sub-sections shall be inserted, and shall be numbered (4A) and (4B) in section seventy-four and (3A) and (3B) in section seventy-six.

(3) This section shall apply to and shall validate rules and nominations made as well before as after the commencement of this Act.

2. *Removal of doubts as to validity of certain Indian laws.*—(1) In section seventy-one of the principal Act shall be inserted the following sub-section :—

"(3A) A regulation made under this section for any territory shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory."

(2) In section eighty-four of the principal Act, after the words "Governor-General in Legislative Council" shall be inserted the words "or a local legislature," and, at the end of the section, shall be inserted the following words :—

"A law made by any authority in British India and repugnant to any

provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void."

(3) This section shall apply to and shall validate laws made as well before as after the commencement of this Act.

3. *Qualification of rulers and subjects of certain states for office.*—After section ninety-six of the principal Act shall be inserted the following section :—

"96A. Notwithstanding anything in any other enactment, the Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any state, or any named member of any independent race or tribe, in territory adjacent to India, shall be eligible for appointment to any such military office."

4. *Admission to Indian Civil Service.*—In section ninety-seven of the principal Act, after the words "British subjects" shall be inserted the words "and of persons in respect of whom a declaration has been made under the last foregoing section who are," and, after sub-section (2), shall be inserted the following sub-section :—

"(2A) The admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions shall be subject to such restrictions as the Secretary of State in Council, with the advice and assistance of the Civil Service Commissioners, may think fit to prescribe, and all such restrictions shall be included in the rules."

5. *Removal of doubts as to validity of Orders in Council under Foreign Jurisdiction Act.*—An Order of His Majesty in Council heretofore or hereafter made under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict., c. 37), empowering the Governor-General of India in Council to make rules and orders in respect of courts or administrative authorities acting for any territory, shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

6. *Transfer of India stock by deed.*—(1) India stock may, if registered for the time being as stock transferable by deed in manner provided by regulations made under this section, be transferred by deed.

(2) The Banks of England and Ireland respectively, with the concurrence of the Secretary of State in Council, shall provide by regulations for a separate stock register being kept for India stock which is for the time being transferable by deed, for the conditions upon which stock is to be entered in or removed from that register, for the mode in which the transfer by deed is to be carried out, and for the payment of any fees in respect of the entry or removal of stock in or from the register and the carrying out of any transfer of stock by deed.

(3) The provisions of all enactments relating to India stock which are in force at the commencement of this Act shall apply to stock transferable by deed in pursuance of this section as they apply to stock transferable in the books of the Banks of England or Ireland, or of the Secretary of State in Council, except so far as express provision is made to the contrary by this section or by the regulations made thereunder.

(4) No stamp duty shall be payable in respect of any deed of transfer of India stock or any dividend warrant or register certificate relating to India stock.

(5) In this section the expression "India stock" means any stock created and issued, whether before or after the commencement of this Act, by the Secretary of State in Council under the authority of Parliament.

7. *Minor amendments, repeals, and saving.*—(1) The principal Act shall be further amended in manner appearing in the First Schedule to this Act.

(2) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(3) Nothing in this Act shall affect any right acquired before the commencement of this Act under any judgment or order of a court of competent jurisdiction.

8. *Short title, commencement, printing and construction.*—(1) This Act may be cited as the Government of India (Amendment) Act, 1916, and the principal Act and this Act may be cited together as the Government of India Acts, 1915 and 1916.

(2) This Act shall come into operation on the first day of September, one thousand nine hundred and sixteen.

(3) Where any enactment or word is directed by this Act, or by any Act for the time being in force, whether passed before or after the commencement of this Act, to be inserted in or added to the principal Act, or to be substituted in the principal Act for any other enactment or word, or where any enactment or word in the principal Act is so directed to be repealed, then all copies of the principal Act printed by His Majesty's printers after that direction takes effect shall be printed with that enactment or word inserted in or added to the Act, or printed therein in lieu of any enactment or word for which the same is substituted, or omitted therefrom, according as the direction requires,



and with the sections and sub-sections numbered in accordance with the direction; and the principal Act shall be construed as if it had, at the time at which the direction takes effect, been enacted with that addition, substitution or omission.

(4) A reference in any enactment, whether passed before or after the commencement of this Act, to the principal Act shall, unless the context otherwise requires, be construed to refer to that Act as amended by any enactment for the time being in force.

# SCHEDULES.

[Section 7 (1).]

## FIRST SCHEDULE.

FURTHER AMENDMENTS OF THE GOVERNMENT OF INDIA ACT, 1915.

## SECOND SCHEDULE.

[Section 7 (2).]

## ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
13 Geo. 3, c. 63	The East India Company Act, 1772.	Sections forty-two, forty-three and forty-five.
24 Geo. 3, sess. 2, c. 25.	The East India Company Act, 1784	The whole Act.
26 Geo. 3, c. 57	The East India Company Act, 1786.	The whole Act.
9 Geo. 4, c. 74	The Criminal Law (India) Act, 1828	Section fifty-six, except so far as in force in the Straits Settlements.
5 & 6 Geo. 5, c. 61	The Government of India Act, 1915	In section twenty-six, paragraph (d). In section eighty-seven, sub-sections (2), (3), (4), and (5). Section one hundred and sixteen.

## CHAPTER 38.

### SMALL HOLDING COLONIES ACT, 1916.

An Act to provide for the acquisition and management of land by the State for experimental Small Holding Colonies, and to extend the powers of acquisition and management of land by certain Government Departments under the Development and Road Improvement Funds Act, 1909, and for other purposes connected therewith.

[23rd August, 1916.

Be it enacted, &c. :—

1. *Power of Board to acquire land for small holding colonies.*—(1) During the continuance of the present war, and a period of twelve months thereafter, the Board of Agriculture and Fisheries (in this Act referred to as "the Board") for the purpose of providing experimental small holding colonies may, with the consent of the Treasury, acquire by agreement any land which, in the opinion of the Board, is suitable for that purpose.

(2) Where the Board, or a landlord at the request of the Board, terminates a tenancy of land by notice to quit, whether given before or after the passing of this Act, with a view to the use of the land or any part thereof by the Board for the provision of small holdings under this Act, the tenant upon quitting shall be entitled to recover from the Board compensation for the loss or expense directly attributable to the quitting which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods or his implements of husbandry, produce, or farm stock on or used in connection with the land:

Provided that no compensation shall be payable under this subsection:

(a) unless the tenant has given to the Board a reasonable opportunity of making a valuation of such goods, implements, produce, and stock as aforesaid; or

(b) if the claim for compensation is not made within three months after the time at which the tenant quits:

and in the event of any difference arising as to any matter under this subsection the difference shall, in default of agreement, be settled by a single arbitrator in accordance with the Agricultural Holdings Act, 1908 [18 Ed. 7, c. 28]:

Provided also that compensation under the Agricultural Holdings Act, 1914 [4 & 5 Geo. 5, c. 7], shall not be payable in any case to which this subsection applies.

(3) The total area of the land for the time being acquired by the Board for the purpose of this section shall not at any time exceed four thousand five hundred acres in England (excluding Monmouthshire), or two thousand acres in Wales and Monmouthshire, or six thousand acres in all, and

in the selection of persons to be settled on the land so acquired the Board shall give preference to persons who have served in the naval or military forces of the Crown in the present war.

(4) For the purpose of the acquisition of land by agreement under this Act, the Lands Clauses Acts shall be incorporated with this Act except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement and the provisions relating to the sale of superfluous land and the provisions with respect to any lands being common or waste land.

(5) Where a labourer, who has been regularly employed on any land acquired by the Board for the purposes of this Act, proves to the satisfaction of the Board that the effect of the acquisition was to deprive him of his employment, and that there was no employment of an equally beneficial character available to him in the same locality, the Board shall pay to him such compensation as they think just for his loss of employment or for his expenses in moving to another locality, and any sum so paid shall be treated as part of the expenses of the acquisition of the land.

2. *Power of Board to promote co-operation in connection with small holdings colonies.*—With the consent of, and subject to regulations made by the Treasury, the Board may promote the formation or extension of societies on a co-operative or co-partnership basis, having for their object, or one of their objects, the establishment or profitable working of holdings provided under this Act, whether in relation to the purchase of requisites, the sale of produce, credit banking, or insurance, or otherwise, and may assist any society by making grants or advances to the society, or guaranteeing advances made to the society, upon such terms and conditions as to rate of interest and repayment or otherwise, and on such security, as the Board think fit, and the Board where they think fit may transfer to any such society the whole or any portion of any colony of small holdings provided under this Act upon such terms and conditions as the Board may think fit:

Provided that the Board shall not make any such transference except upon such terms as provide for the payment of the full value of the land transferred, as determined by the Board with the consent of the Treasury

3. *Powers in relation to acquisition of land.*—The power of acquiring land conferred on the Board by this Act or the Development and Road Improvement Funds Act, 1909, shall include power by agreement to take land on lease or acquire an option of purchasing land or taking land on lease.

4. *Powers of management of land acquired.*—(1) The Board shall, in relation to any land acquired by them under this Act or under Part I. of the Development and Road Improvement Funds Act, 1909 [9 Ed. 7, c. 47], whether acquired before or after the passing of this Act, have power—

(a) to let or manage the land or improve the same by the erection of buildings or otherwise;

(b) to enfranchise the land, and to purchase or redeem any land tax, quit rent, chief rent, tithe rentcharge, or other rentcharge or any perpetual sum issuing out of the land;

(c) subject to compliance with any conditions prescribed by regulations made by the Treasury, or with the consent of the Treasury, to sell or exchange the land, and so that the purchase money on the sale of a small holding to a person willing himself to cultivate the holding may be made payable in periodical instalments or otherwise as the Treasury may direct.

(2) Where a small holding is sold by the Board under this Act the provisions of section twelve of the Small Holdings and Allotments Act, 1908 [8 Edw. 7, c. 36], relating to a small holding sold by a county council under that Act shall apply as if herein re-enacted with the necessary adaptations.

5. *Expenses and receipts of Board.*—(1) Any expenses of the Board incurred in the exercise of any of their powers under this Act in relation to land acquired or to be acquired under the Development and Road Improvement Funds Act, 1909, shall be defrayed out of any advances made to the Board for the purpose under that Act; and any sums received by the Board in respect of any such land shall be applied as the Treasury may direct.

(2) Any sums expended or received by the Board in pursuance of their powers under this Act in relation to land acquired under this Act, shall be paid out of or into the Small Holdings Account.

6. *Particulars of valuations to be ascertained and recorded.*—Where land is purchased or leased under this Act the Board shall ascertain and record the annual value thereof as adopted for rating purposes at the date of such purchase or lease, and these particulars, together with the amount of the price or rent, shall be included in the information set out in the annual report presented to Parliament:

Provided that when the land purchased or leased is part of a larger unit for valuation, particulars shall be given showing the apportionment of the said valuations as between the several portions after severance.

7. *Power to grant or demise land to Board for perpetual rent.*—

(1) Any person having power (whether subject to any consent or conditions or not) to sell land authorised to be acquired by the Board may, subject to the like consent and conditions, grant or demise the land in perpetuity or for any term of years to the Board at such fee farm or other rent, secured by such condition of re-entry or otherwise as may be agreed upon, and with or without a right of renewal, or grant to the Board an option to acquire the land:

Provided that, where the power to sell arises under the Settled Land Acts, 1882 to 1890, the powers conferred by this section shall be exercised only with the consent of the trustees of the settlement for the purposes of those Acts, or with the sanction of the court.

(2) This section shall extend and apply to land belonging to His Majesty in right of the Crown or of the Duchy of Lancaster, and to land belonging to the Duchy of Cornwall.

8. *Interpretation and miscellaneous.*—(1) For the purposes of this Act and the Lands Clauses Acts as incorporated with this Act the expression "land" includes any right or easement in or over land, and the expression "small holding" has the same meaning as in the Small Holdings and Allotments Act, 1903.

(2) The powers conferred by this Act are in addition to and not in substitution for any powers otherwise exercisable by the Board.

(3) Any person who sells land to the Board or purchases land from the Board or exchanges land with the Board shall not be entitled to require proof of compliance with any conditions prescribed by regulations made by the Treasury, or of the consent of the Treasury, or be affected by any omission to comply with those conditions, or to obtain such consent.

9. *Provisions as to solicitor to Board.*—The Revenue Solicitors Act, 1828 [9 Geo. 4, c. 25], and section forty-seven of the Solicitors Act, 1843 [6 & 7 Vict. c. 73] (which relate to solicitors of various Government departments), shall extend and apply to the solicitor of the Board in like manner as they apply to the solicitors of the Government departments therein mentioned.

10. *Annual report of proceedings to Parliament.*—The Board shall present to Parliament an annual report of their proceedings under this Act which shall include a statement of the financial position of each colony.

11. *Application to Scotland.*—This Act shall apply to Scotland, subject to the following modifications:—

(a) "The Board of Agriculture for Scotland" shall be substituted for "the Board of Agriculture and Fisheries," "arbitrer" shall be substituted for "arbitrator," "the Agricultural Holdings (Scotland) Act, 1908," shall be substituted for "the Agricultural Holdings Act, 1908," "the Agriculture (Scotland) Fund" shall be substituted for "the Small Holdings Account," "easement" means servitude, and "small holding" means a small holding as defined in section thirty-three of the Small Landholders (Scotland) Act, 1911 [1 & 2 Geo. 5, c. 49]:

(b) Paragraph (b) of section four and sections seven and nine of this Act shall not apply:

(c) The total area of the land for the time being acquired by the Board of Agriculture for Scotland for the purpose of section one of this Act shall not at any time exceed two thousand acres, of which three-fourths shall consist of land suitable to be cultivated as arable land.

12. *Short title and extent.*—(1) This Act may be cited as the Small Holding Colonies Act, 1916.

(2) This Act shall not extend to Ireland.

### CHAPTER 39.

#### ANGLO-PORTUGUESE COMMERCIAL TREATY ACT, 1916.

An Act to amend the Anglo-Portuguese Commercial Treaty Act, 1914. [23rd August, 1916.]

Whereas the treaty of commerce and navigation set out in the Schedule to the Anglo-Portuguese Commercial Treaty Act, 1914 [5 & 6 Geo. 5, c. 1] (hereinafter referred to as the "principal Act"), has not been ratified, and in order to give effect to the intention of the said treaty it is expedient further to limit the use of the description "port" as applied to wine:

Be it therefore enacted, &c.:—

1. *Further limitation of the use of the description "port."*—(1) The description "port" applied to wine the produce of Portugal, imported into the United Kingdom after the commencement of this Act, shall be deemed to be a false trade description within the meaning of the Merchandise Marks Act, 1887 [50 & 51 Vict. c. 28], if the wine on importation into the United Kingdom was not accompanied by a certificate issued by the competent Portuguese authorities to the effect that it was a wine to which by the law of Portugal the description "port" may be applied, and that Act shall have effect accordingly:

Provided that it shall be a good defence to any proceedings under that Act in respect of such a description as aforesaid if it is proved that the wine to which the description is applied is intended solely for exportation from the United Kingdom.

(2) This provision is in addition to and not in derogation of any of the provisions contained in the principal Act.

2. *Short title, citation, and commencement.*—(1) This Act may be cited as the Anglo-Portuguese Commercial Treaty Act, 1916, and the principal Act and this Act may be cited together as the Anglo-Portuguese Commercial Treaty Acts, 1914 and 1916.

(2) This Act shall come into operation at the expiration of one month after the date of the passing of this Act.

### CHAPTER 40.

#### TELEGRAPH (CONSTRUCTION) ACT, 1916.

An Act to amend the Telegraph Acts, 1863 to 1915, with respect to the construction and maintenance of telegraphic lines. [23rd August, 1916.]

Be it enacted, &c.:—

1. *User of land and buildings for telegraphic lines.*—If the owner, lessee, or occupier of any land or building refuses or fails to give his consent to the placing of a telegraphic line under, in, upon, over, along, or across the land or building within two months after being required to do so by notice from the Postmaster-General, a difference shall be deemed to have arisen between the Postmaster-General and that owner, lessee, or occupier, and sections three, four and five of the Telegraph Act, 1878, shall apply accordingly as if it were a difference arising under that Act:

Provided that the tribunal to which the difference is referred under these sections shall not give its consent to the placing of the line unless satisfied that such refusal or failure is contrary to the public interest; and in deciding whether to give its consent or to impose any terms, conditions, or stipulations, including the carrying of any portion of the line underground, the tribunal shall, among other considerations, have regard to the effect, if any, on the amenities or value of the land of the placing of the line in the manner proposed:

Provided also that, subject as aforesaid, all the provisions of the Telegraph Act, 1863 [26 & 27 Vict. c. 112], shall apply in the case of the exercise of any powers authorised to be exercised under this section, and such owner, lessee, or occupier, shall have and enjoy all the benefits of such provisions.

2. *Amendment of section 4 of 55 & 56 Vict. c. 59.*—The proviso to subsection (1) of section four of the Telegraph Act, 1892 (which relates to telegraphic lines constructed irregularly or by persons other than the Postmaster-General), shall extend and apply to a telegraphic line placed under, in, upon, over, along or across any land or building, as well as to a telegraphic line constructed under or along a street or public road.

3. *Application of Ed. 7, c. 33, ss. 3 and 6.*—Section three and section six of the Telegraphic (Construction) Act, 1908 (which relate to public recreation grounds and the determination of differences), shall apply as if they were herein re-enacted and in terms made applicable to this Act.

4. *Restriction on power of entry for construction and maintenance.*—Before entering on land or buildings for the purpose of the construction or maintenance of any telegraphic line the Postmaster-General shall, except in case of emergency, endeavour to make an arrangement with the occupier of the land as to the times of entry for such purpose, and if any difference arises between the Postmaster-General and the occupier it shall be determined in manner aforesaid.

5. *Interpretation, notices, repeal, extent, and short title.*—(1) In this Act any expressions to which a special meaning is attached under the Telegraph Acts, 1863 to 1915, or any of them, shall have the same respective meanings in this Act.

(2) Section twelve of the Telegraph Act, 1878 (which relates to the printing, authentication and service of notices and other documents), shall apply, for the purposes of this Act, as it applies for the purposes of that Act.

(3) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(4) This Act and the Telegraph (Construction) Act, 1908, shall extend to the Isle of Man as if they were Telegraph Acts to which the Telegraph (Isle of Man) Act, 1889 [52 & 53 Vict. c. 34], applies.

(5) This Act may be cited as the Telegraph (Construction) Act, 1916, and may be cited with the Telegraph Acts, 1863 to 1915.

### SCHEDULE.

[Section 5 (3).]

#### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
55 & 56 Vict. c. 59	The Telegraph Act, 1892	Section two.
8 Ed. 7, c. 33	The Telegraph (Construction) Act, 1908	Sections one and four.

### CHAPTER 41.

#### MERCHANT SHIPPING (SALVAGE) ACT, 1916.

An Act to authorize the recovery of salvage in respect of services rendered by certain ships belonging to His Majesty. [23rd August, 1916.]

Be it enacted, &c.:—

1. *Right of Admiralty to claim salvage in respect of services of certain ships.*—Where salvage services are rendered by any ship belonging to His Majesty and that ship is a ship specially equipped with salvage plant, or is a tug, the Admiralty shall, notwithstanding



anything contained in section five hundred and fifty-seven of the Merchant Shipping Act, 1894, be entitled to claim salvage on behalf of His Majesty for such services, and shall have the same rights and remedies as if the ship rendering such services did not belong to His Majesty.

2. *Short title and construction.*—This Act may be cited as the Merchant Shipping (Salvage) Act, 1916, and shall be construed as one with the Merchant Shipping Acts, 1894 to 1914, and those Acts and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1916.

## CHAPTER 42.

### BRITISH SHIPS (TRANSFER RESTRICTION) ACT, 1916.

An Act to amend and extend the British Ships (Transfer Restriction) Act, 1915. [23rd August, 1916.]

Be it enacted, &c. :—

1. *Extension of the British Ships (Transfer Restriction) Act, 1915.*—(1) The British Ships (Transfer Restriction) Act, 1915 [5 Geo. 5, c. 21] (in this Act referred to as the principal Act), is hereby extended so as to apply to mortgages (including transfers of mortgages) of ships made after the tenth day of August nineteen hundred and sixteen as it applies to transfers of ships, and shall apply to mortgages (including transfers of mortgages) and transfers of ships to foreign controlled companies made after the tenth day of August nineteen hundred and sixteen as it applies to transfers of ships to persons not qualified to own a British ship.

(2) The expression "foreign controlled company" means any corporation—

(a) where the majority of the directors, or persons occupying the position of directors by whatever name called, are not British subjects; or

(b) where the majority of the voting power is in the hands of persons who are not British subjects, or who exercise their voting powers directly or indirectly on behalf of persons who are not British subjects; or

(c) where the control is by any other means whatever in the hands of persons who are not British subjects; or

(d) where the executive is a foreign controlled company, or where the majority of the executive are appointed by a foreign controlled company.

A corporation shall not be deemed to be a British subject for the purposes of this section unless it is established in and subject to the laws of some part of His Majesty's Dominions or of some British Protectorate, and has its principal place of business therein.

(3) The Board of Trade may require any person who is the owner or mortgagee of a British ship, or who applies to be registered as the owner or mortgagee of a British ship, to furnish to the Board such particulars as appear necessary to the Board for the purpose of ascertaining whether or not that person is, or is a trustee for, or otherwise represents, a foreign controlled company, and, in the case of a corporation, may also require the secretary, or any other officer of the corporation performing the duties of secretary to furnish those particulars.

If any person fails to supply such particulars as it is in his power to give when required, or furnishes particulars which are false in any material particular, he shall be guilty of a misdemeanour.

2. *Forfeiture of a ship in certain circumstances.*—Where, after the passing of this Act, any person who is the owner or mortgagee of a British ship ceases to be a British subject or becomes a foreign controlled company, that ship, or, in the case of a mortgagee of a ship, the interest of the mortgagee, shall be subject to forfeiture under Part I. of the Merchant Shipping Act, 1894 [57 & 58 Vict. c. 60].

3. *Interpretation, duration, construction, and short title.*—(1) In this Act, unless the context otherwise requires, any reference to a ship shall include a reference to a share in a ship.

(2) The principal Act and this Act shall have effect during the continuance of the present war and a period of three years thereafter, and subsection (2) of section three of the principal Act is hereby extended accordingly.

(3) This Act may be cited as the British Ships (Transfer Restriction) Act, 1916, and shall be read as one with the principal Act, and the principal Act and this Act may be cited together as the British Ships (Transfer Restriction) Acts, 1915 and 1916.

## CHAPTER 43.

### WAR CHARITIES ACT, 1916.

An Act to provide for the Registration of Charities for purposes connected with the present War. [23rd August, 1916.]

Be it enacted, &c. :—

1. *Prohibition against raising money for war charities unless registered.*—(1) It shall not be lawful to make any appeal to the public for

donations or subscriptions in money or in kind to any war charity as herein-after defined, or to raise or attempt to raise money for any such charity by promoting any bazaar, sale, entertainment or exhibition, or by any similar means, unless the charity is registered under this Act and the approval in writing of the committee or other governing body of the charity has been obtained, either directly or through any person duly authorized to give such approval on behalf of such governing body, and if any person contravenes the provisions of this section he shall be guilty of an offence against this Act.

Provided that this Act shall not apply to any collection at divine service in a place of public worship nor to any charity which may, under any regulations made under this Act, be exempted by the registration authority from the provisions of this section.

(2) This section, so far as it relates to registration, shall not apply to any charity until the expiration of one month after the passing of this Act, nor to any charity pending the decision of the registration authority on an application for the registration of such charity made within such month.

2. *Registration of war charities.*—(1) The registration authority shall—

(a) as respects the City of London, be the Mayor, Aldermen, and Commons of the City of London in common council assembled;

(b) as respects a municipal borough or urban district, be the council of the borough or district;

(c) elsewhere, be the county council:

Provided that any such council may act through a committee of the council, which may, if the council think fit, comprise persons (including women) who are not members of the council.

(2) Applications for registration or exemption under this Act shall be sent to the registration authority for the area in which the administrative centre of the charity is situate, and any question as to where the administrative centre of any charity is situate shall be finally determined by the Charity Commissioners.

(3) The registration authority may, before registering any charity, make such inquiries with respect to the charity as they think fit, but shall not refuse to register any charity having its administrative centre within the area of the authority unless they are satisfied that the charity is not established in good faith for charitable purposes, or will not comply with the conditions imposed by this Act, or that it will not be properly administered.

(4) An appeal from a refusal by a registration authority to register any charity shall lie to the Charity Commissioners, and, if as the result of such appeal the Charity Commissioners determine that the application for registration ought not to be refused the registration authority shall register the charity.

(5) Every registration authority shall give to each charity registered or exempted a certificate of registration or exemption, and shall keep a register of the charities registered by them under this Act, and lists of all charities registration of which has been refused by them and of all charities which have been exempted from registration by them, and shall send to the Charity Commissioners a copy of such register and such lists, and shall from time to time notify the Charity Commissioners of any changes in the particulars entered in the register and of changes in such lists.

(6) The Charity Commissioners shall keep a combined register of all charities registered under this Act, and a combined list of all charities in respect of which applications for registration under this Act have been refused, and a combined list of all charities which have been exempted from registration under this Act.

(7) Any expenses incurred by a council as registration authority under this Act may be paid out of any fund or rate out of which the expenses of the council are payable.

(8) Any expenses incurred by the London County Council under this Act shall be defrayed out of the county fund as expenses for general county purposes.

3. *Conditions to be complied with by registered charities.*—Charities registered under this Act shall comply with the following conditions—

(i) the charity shall be administered by a responsible committee or other body consisting of not less than three persons; and minutes shall be kept of the meetings of the committee or other body in which shall be recorded the names of the members of the committee or other body attending the meetings;

(ii) proper books of account shall be kept, and such accounts shall include the total receipts and the total expenditure of any collection, bazaar, sale, entertainment, or exhibition held with the approval of the governing body of the charity, and the accounts shall be audited at such intervals as may be prescribed by regulations under this Act by some person or persons approved by the registration authority, and copies of the accounts so audited shall be sent to the registration authority;

(iii) all moneys received by the charity shall be paid into a separate account at such bank or banks as may be specified as respects the charity in the register;

(iv) such particulars with regard to accounts and other records as the registration authority or the Charity Commissioners may require shall be furnished to the registration authority or the

Charity Commissioners, and the books and accounts of the charity shall be open to inspection at any time by any person duly authorized by the registration authority or by the Charity Commissioners.

4. *Regulations.*—The Charity Commissioners may, subject to the approval of the Secretary of State, make regulations—

- (a) prescribing the forms for applications under this Act and the particulars to be contained therein;
- (b) prescribing the form of the registers to be kept under this Act and the particulars to be entered therein;
- (c) providing for the inspection of registers and lists kept under this Act, and the making and the furnishing and certification of copies thereof and extracts therefrom;
- (d) prescribing the fee (not exceeding ten shillings) to be paid on registration, and the fees for making or obtaining copies of, and extracts from, registers and lists;
- (e) requiring notification to the registration authority of any changes requiring alterations in the particulars entered in the register;
- (f) providing for the exemption of charities from this Act and prescribing the grounds of exemption;
- (g) generally for carrying this Act into effect.

5. *Removal from the register.*—(1) The registration authority, if satisfied that any charity registered under this Act is not being carried on in good faith for charitable purposes, or is not complying with any of the conditions imposed under this Act, or is not being properly administered, may remove the charity from the register, and shall notify such removal to the Charity Commissioners, and if they so remove it shall give public notice of its removal:

Provided that an appeal shall lie to the Charity Commissioners against the decision of the registration authority to remove a charity from the register.

(2) Where any charity is removed from the register the Charity Commissioners may, notwithstanding that an appeal is pending—

- (a) order any bank or other person who holds money or securities on behalf of the charity not to part with such money or securities without the authority of the Commissioners;
- (b) order any cash or securities held for any such charity to be paid or transferred to the Official Trustees of Charitable Funds and for that purpose may make, without any application to them for the purpose, any such order as they are authorized under section two of the Charitable Trusts Act, 1860 [23 & 24 Vict. c. 136], to make;

and if any person fails to comply with any such order he shall, without prejudice to any other liability, be guilty of an offence against this Act.

(3) The Charity Commissioners may also, where a charity is removed from the register, establish a scheme for the regulation of the charity in accordance with their ordinary jurisdiction under the Charitable Trusts Acts, 1853 to 1914, as if the charity were a charity within the jurisdiction of the Commissioners under those Acts, but without the necessity of any application being made for the purpose.

6. *Powers of Charity Commissioners for purposes of appeals.*—For the purposes of an appeal under this Act the Charity Commissioners shall, in relation to charities registered or applying to be registered under this Act, have all such powers with respect to requiring accounts, statements, written answers to inquiries, the attendance of persons for examination on oath or otherwise, the production of documents, the furnishing of copies and extracts from documents, the examination of registers and records, and the transmission of documents for examination, as are exercisable by them under the Charitable Trusts Acts, 1853 to 1914, in relation to charities within the jurisdiction of the Commissioners under those Acts, and those Acts shall apply accordingly.

7. *Powers as to unregistered war charities.*—(1) Where the Charity Commissioners are satisfied on the representation of the registration authority or a chief officer of police that there is reasonable ground for believing that any unregistered war charity is not being or has not been carried on in good faith for charitable purposes, or is not complying or has not complied with conditions substantially corresponding with the conditions imposed on registered charities under this Act, or is not being or has not been properly administered, the Commissioners may exercise as respects the charity any of the powers which are exercisable by them with respect to a charity which, having been registered under this Act, has been removed from the register, and for the purpose of an inquiry into any charity under this section the Charity Commissioners shall have such powers in relation to the charity as are conferred by this Act on the Commissioners for the purposes of appeals:

Provided that the Charity Commissioners shall not exercise the power of establishing a scheme for the regulation of any charity under this section without giving the charity a full opportunity of being heard.

(2) This section shall apply to unregistered war charities whether or not an application for registration has been made, and to war charities registration of which has been refused.

8. *False statements, &c.*—If any person in any application for registration or exemption or in any notification of any change requiring alterations in the registered particulars makes any false statement or false representation, or if any person falsely represents himself to be an officer or agent of a war charity, or if he fails to send any notification

which he is required under this Act to send, he shall be guilty of an offence against this Act.

9. *Penalties for offences.*—(1) Any person guilty of an offence against this Act shall be liable on summary conviction to a fine not exceeding one hundred pounds, or to imprisonment with or without hard labour for a term not exceeding three months.

(2) No proceedings for an offence against this Act shall be instituted except by or with the consent of the Charity Commissioners.

10. *Interpretation.*—For the purposes of this Act—

The expression "war charity" means any fund, institution, or association (whether established before or after the commencement of this Act) having for its object or amongst its objects the relief of suffering or distress, the supply of needs or comforts, or any other charitable purpose connected with the present war, but shall not include any fund, institution or association established before the commencement of the present war where any such object as aforesaid is subsidiary only to the principal purposes of the charity, nor shall it include the Royal Patriotic Fund Corporation or the Statutory Committee or any local or district committee established under the Naval and Military War Pensions, &c., Act, 1915 [5 & 6 Geo. 5, c. 83].

Any question whether a charity is a war charity shall be finally determined by the Charity Commissioners.

11. *Application to Scotland.*—This Act shall apply to Scotland, subject to the following modifications:—

(a) The Local Government Board for Scotland (hereinafter referred to as the Board) shall be substituted for the Secretary of State, and the Charity Commissioners respectively.

(b) A royal, parliamentary or police burgh, and the town council thereof, shall be substituted for a municipal borough or urban district and the council thereof respectively.

(c) Paragraph (b) of subsection (2) and subsection (3) of the section of this Act relating to removal from the register, and the section relating to the powers of the Charity Commissioners for the purposes of appeals, shall not apply, and in lieu thereof the following provisions shall be substituted, that is to say:—The Board may order any cash or securities held for any such charity to be paid or transferred to the Board or to such bank or other person as the Board may direct; and may frame a scheme providing for the future management of the charity and for the appointment of trustees to manage the same, or order that the charity be discontinued and that the funds be paid over to some registered charity having similar objects, or be otherwise applied as the order may direct, and if any person fails to comply with any such order he shall without prejudice to any other liability be guilty of an offence against this Act.

(d) Subsection (2) of the section of this Act relating to penalties for offences shall not apply.

(e) For the purposes of this Act the Board may make such inquiry as they think necessary and shall (except as regards costs) have the like powers in regard to any such inquiry as they have under section twenty-five of the Local Government (Scotland) Act, 1894 [57 & 58 Vict. c. 58], for the purposes of that section.

12. *Short title and extent.*—(1) This Act may be cited as the War Charities Act, 1916.

(2) This Act shall not extend to Ireland: Provided that if either House of Parliament presents an address to His Majesty praying that this Act shall apply to Ireland it shall be lawful for His Majesty by Order in Council to extend this Act to Ireland, subject to such modification and adaptation as may be specified in the Order.

## CHAPTER 44.

### PARLIAMENT AND LOCAL ELECTIONS ACT, 1916.

An Act to amend the Parliament and Registration Act, 1916; and to extend the Elections and Registration Act, 1915, with respect to elections of local authorities and other bodies, and the revision of jurors' lists in Ireland.

[23rd August, 1916.]

Be it enacted, &c.:—

1. *Further prolongation of present Parliament.*—Subsection (1) of section one of the Parliament and Registration Act, 1916 [5 & 6 Geo. 5, c. 100], shall have effect as if six years and three months were substituted therein for five years and eight months.

2. *Further postponement of local elections.*—(1) The next statutory elections of county and borough councillors, district councillors, guardians, and parish councillors, and of members of school boards in Scotland, shall be postponed, or, in the case of elections already postponed under the Elections and Registration Act, 1915 [5 & 6 Geo. 5, c. 76], further postponed, for a year; and the term of office of the existing councillors, guardians, and members shall accordingly be extended, or further extended, by one year.

This provision shall apply only where the next statutory election (whether a postponed election or not) would take place before the first day of June, nineteen hundred and seventeen, or in Ireland before the twentieth day of May, nineteen hundred and seventeen.



(2) Subsections (3), (4), (5) and (6) of section one of the Elections and Registration Act, 1915, shall apply to the foregoing subsection as they apply to the provisions of that section with the substitution of the year nineteen hundred and seventeen for the year nineteen hundred and sixteen.

(3) Section seventeen of the Local Government (Emergency Provisions) Act, 1916 [6 & 7 Geo. 5, c. 12] (which amends the Elections and Registration Act, 1915, with respect to casual vacancies), shall have effect as if this Act were mentioned as well as the Elections and Registration Act, 1915, in subsection (1) thereof, and as if two years were substituted for one year in subsection (2) thereof.

(4) Section thirty-six of the Municipal Corporations Act, 1892 (45 & 46 Vict. c. 50), and any other enactment making the payment of a fine a condition of resigning any office, shall not have effect so as to require the payment of a fine in the case of a councillor, guardian, or member or elective officer of a local or other body who resigns any office after the date on which his term of office would, but for the provisions of the Elections and Registration Act, 1915, or this Act, have expired.

(5) Nothing in this section shall operate to continue in Scotland any councillor in the office of bailie beyond the date at which he would in ordinary course have retired as a councillor.

3. *Removal of restriction as to steps to be taken for preparation of registers.*—Notwithstanding anything in section two of the Parliament and Registration Act, 1916, or any other Act, any steps may be taken in September and October for the purpose of the preparation of a new parliamentary and local government register of electors as are required to be taken under the Acts relating to the registration of electors in April and May, but should a dissolution of Parliament take place before any Act for the preparation of a new parliamentary register has been passed and such register has been brought into force, the Parliament so elected shall exist for a period not exceeding two years.

4. *Revision of jurors' lists in Ireland.*—Jurors' lists in Ireland shall be revised in the present year in the same manner in which they were revised in the year nineteen hundred and fifteen, and accordingly subsection (2) of section four of the Elections and Registration Act, 1915, shall apply for the purposes of the revision in the present year as it applied for the purposes of the revision in the year nineteen hundred and fifteen.

5. *Short title and construction.*—This Act may be cited as the Parliament and Local Elections Act, 1916, and section two of this Act shall be construed as one with the Elections and Registration Act, 1915.

## CHAPTER 45.

### TIME (IRELAND) ACT, 1916.

An Act to assimilate the Time adopted for use in Ireland to that adopted for use in Great Britain. [23rd August, 1916.]

Be it enacted, &c. :—

1. *Time in Ireland.*—As from two o'clock in the morning, Dublin mean time, on Sunday the first day of October nineteen hundred and sixteen, the time for general purposes in Ireland shall be the same as the time for general purposes in Great Britain both during the periods when the Summer Time Act, 1916 [6 & 7 Geo. 5, c. 14], is in force and at all other times, and accordingly the enactments mentioned in the schedule to this Act shall, as from the same date, be repealed to the extent specified in the third column to that schedule.

2. *Short title.*—This Act may be cited as the Time (Ireland) Act, 1916.

#### SCHEDULE.

Session and Chapter.	Short Title.	Extent of Repeal.
43 & 44 Vict. c. 9	The Statutes (Definition of Time) Act, 1890	In section one the words "in the case of Great Britain" and the words "and in the case of Ireland, Dublin mean time."
6 & 7 Geo. 5, c. 14	The Summer Time Act, 1916	In subsection (1) of section one the words "in Great Britain" and subsection (4) of the same section.

## CHAPTER 46.

### LAW AND PROCEDURE (EMERGENCY PROVISIONS) (IRELAND) ACT, 1916.

An Act to amend the Law and the Procedure of Civil Courts in Ireland, in relation to conditions arising out of the recent disturbances in that country. [23rd August, 1916.]

Be it enacted, &c. :—

1. *Amendment of law and procedure.*—(1) The period commencing on the beginning of the twenty-fourth day of April nineteen hundred and sixteen and ending at the end of the eighth day of May nineteen hundred and sixteen shall not be reckoned, and shall be deemed never to have been reckoned, in computing the times limited for the doing of any act or the taking of any proceeding in any court in Ireland, and where any such act or proceeding is directed or allowed to be done on a certain day, if that day was a day within the period aforesaid, the act or proceeding shall be considered as done or taken in due time if it was done or taken before the end of the ninth day of May, nineteen hundred and sixteen.

(2) Where the court is satisfied on an application made within the prescribed time and in the prescribed manner that by reason of the recent disturbances in Ireland any person has been or is unable to do an act or take a proceeding within the time limited in that behalf by any statute, order, rule, regulation, deed, or agreement, the court may grant such extension of time and such further or other relief upon such terms and in such manner as appears to the court to be equitable.

(3) Where any original document required to be filed, enrolled or lodged in any public office has been lost or destroyed in the course of the recent disturbances in Ireland, the High Court or a judge of that court may on the application of any person interested by order authorise the filing, enrolment or lodgment of a properly authenticated copy of the document in lieu of the original within such time as may be fixed by the order, and that copy shall thereupon be deemed to be the original for all purposes and to be duly filed, enrolled or lodged if filed, enrolled or lodged within the time so fixed.

(4) Subject to rules made under this Act the powers and jurisdiction of the High Court with respect to the perpetuation of testimony shall extend to and may be exercised for the perpetuation of the testimony afforded by any muniment of title or other document which has been lost, destroyed or damaged in the course of the recent disturbances in Ireland whether the right or claim of the person instituting proceedings is a present right or claim or depends upon the happening of some future event.

(5) Subsections (2) and (3) of section one of the Courts (Emergency Powers) Act, 1914 [4 & 5 Geo. 5, c. 78], shall be amended by the insertion of the words "or to the recent disturbances in Ireland" after the words "present war" wherever the latter words occur in those subsections.

(6) No claim for compensation under any of the enactments relative to compensation for criminal or malicious injuries shall lie against a local authority in respect of any injury to person or property sustained in the course of the recent disturbances in Ireland.

(7) In any action or proceeding for the recovery of a deed or other document, or for damages for its loss or non-production, it shall be a sufficient defence if it is proved that the deed or other document, being at the time of the commencement of the recent disturbances in Ireland in the possession or under the control of a person entitled to have the possession or control thereof, was lost or destroyed in the course and as a result of those disturbances.

(8) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving full effect to the provisions of this Act.

(9) This Act shall not apply to criminal matters or proceedings.

(10) In this Act, unless the context otherwise requires,—

the expression "the court," as respects matters and proceedings pending in the county court and as respects matters and proceedings within the jurisdiction of the county court and not pending in any other court, means the county court; as respects matters and proceedings pending in a court of quarter sessions, means the court of quarter sessions; and as respects all other matters and proceedings, means the High Court or a judge of that court; and the expression "prescribed" means prescribed by rules under this section.

2. *Citation and extent.*—This Act may be cited as the Law and Procedure (Emergency Provisions) (Ireland) Act, 1916, and shall apply to Ireland only.

## CHAPTER 47.

### MUNICIPAL SAVINGS BANKS (WAR LOAN INVESTMENT) ACT, 1916.

An Act to facilitate the Investment of Savings in Securities issued for the purposes of the present War by means of the establishment of Municipal Savings Banks. [23rd August, 1916.]

Be it enacted, &c. :—

1. *Power of councils of boroughs to establish savings banks.*—(1) For the purpose of facilitating the investment of savings in securities issued for the purposes of the present war it shall be lawful for any council to which this section applies, with the consent of the Treasury, after consultation with the Local Government Board, or in the case of Scotland with the Secretary for Scotland, to establish and maintain a savings bank, and to receive at that bank deposits, and to guarantee the pay-

ment of interest on and the repayment of such deposits, and for that purpose to charge such rate or fund out of which any of the expenses of the council are payable as may be prescribed by regulations made under this section, subject, however, to the following conditions:—

(a) the bank shall not receive any deposits except from persons in the employment of some other person and made through their employers either by way of deductions from wages or otherwise, nor shall the bank receive any deposit which makes the sum standing in the name of any depositor in the bank exceed two hundred pounds;

(b) the bank shall not be carried on (otherwise than for the purpose of winding it up) after the expiration of three months from the termination of the present war;

(c) all sums belonging to the bank, except such as are required to meet current liabilities, shall be invested through the National Debt Commissioners in such of the following securities issued for the purposes of the present war as those Commissioners think fit, that is to say, either in Treasury bills or in advances to the Treasury of sums which the Treasury may borrow for the purpose of raising any sum which they are authorised to issue out of the Consolidated Fund under any Consolidated Fund Act or Appropriation Act;

(d) interest shall be paid by the National Debt Commissioners to the bank on the balance from time to time standing to the credit of the bank at such rate as may from time to time be determined by the Treasury having regard to the interest earned on the sums so invested;

(e) the accounts of the bank shall be kept separate from all other accounts of the council, and shall be audited in such manner as may be prescribed by regulations made under this section, and no money paid into the bank shall be used for any purpose of the council other than the bank;

(f) the rate of interest payable on deposits shall be subject to the approval of the Treasury;

(g) the aggregate amount of the sums which a depositor may withdraw in any period of seven days without giving seven days' notice shall be limited to one pound;

(h) the bank shall be carried on in accordance with such regulations as the Treasury, after consultation with the Local Government Board, or in the case of Scotland with the Secretary for Scotland, may prescribe.

(2) Regulations made by the Treasury under this section may apply, with or without modification, any of the provisions (including penal provisions) contained in the enactments relating to savings banks, but, save as so applied, those enactments shall not apply to a savings bank established under this section.

(3) The councils to which this section applies are the councils of municipal boroughs in England, and royal, parliamentary, and police burghs in Scotland, having a population, according to the census of nineteen hundred and eleven, of not less than two hundred and fifty thousand.

3. *Short title.*—This Act may be cited as the Municipal Savings Banks (War Loan Investment) Act, 1916.

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